

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

*In Re: Zillow Group, Inc. Session Replay  
Software Litigation*

This Document Refers to: All Actions

Master File No. 2:22-cv-01282-JLR

**CONSOLIDATED AMENDED  
CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Natalie Perkins, Kenneth Hasson, Jamie Huber, David Kauffman, Ashley Popa, Jill Strelzin, Jill Adams, Jill Adams as natural mother and next friend of her minor child, H.A, and Ryan Margulis (collectively “Plaintiffs”), individually and on behalf of themselves and all others similarly situated, hereby file this consolidated amended class action complaint against Defendant Zillow Group, Inc. (“Zillow”) and Defendant Microsoft Corporation (“Microsoft”) (collectively “Defendants”), and in support thereof allege the following:

**INTRODUCTION**

1. This is a class action brought against Defendants for wiretapping the electronic communications of visitors to Zillow’s website, www.zillow.com, and all of its subpages (“Zillow’s website”). Zillow procures third-party vendors, such as Microsoft Corporation, to embed snippets of JavaScript computer code (“Session Replay Code”) on Zillow’s website,

1 which then deploys on each website visitor's internet browser for the purpose of intercepting  
2 and recording the website visitor's electronic communications with the Zillow website,  
3 including their mouse movements, finger swipes (for those who used their mobile phone and its  
4 web browser to interact with the website), clicks, keystrokes (such as text being entered into an  
5 information field or text box), URLs of web pages visited, and/or other electronic  
6 communications in real-time ("Website Communications"). Microsoft and the other third-party  
7 vendors (collectively, "Session Replay Providers") create and deploy the Session Replay Code  
8 at Zillow's request.

9         2. After intercepting and capturing the Website Communications, Zillow,  
10 Microsoft and other Session Replay Providers use those Website Communications to recreate  
11 website visitors' entire visit to Zillow's website. Additionally, Microsoft and other Session  
12 Replay Providers create a video replay of the user's behavior on the website and provide it to  
13 Zillow for analysis. Zillow's procurement of the Session Replay Providers to secretly deploy  
14 the Session Replay Code results in the electronic equivalent of "looking over the shoulder" of  
15 each visitor to the Zillow website for the entire duration of their website interaction.

16         3. Defendants' conduct violates the Washington Wiretapping Statute, Wash. Rev.  
17 Code §9.73.030 *et seq.*, the Illinois Eavesdropping Act, 720 ILCS 5/14-1, *et seq.*, the  
18 Pennsylvania Wiretap and Electronic Surveillance Control Act, 18 Pa. Cons. Stat. 5701, *et seq.*,  
19 California Penal Code § 631, the Missouri Wiretap Act, Mo. Ann. Stat. § 542.400, *et seq.*, and  
20 constitutes an invasion of the privacy rights of website visitors.

21         4. Plaintiffs bring this action individually and on behalf of a nationwide class of all  
22 natural persons in the United States and its territories whose Website Communications were  
23 intercepted through the use of Session Replay Code embedded in [www.zillow.com](http://www.zillow.com) (the

1 “Nationwide Class”). In the alternative, Plaintiffs bring this action on behalf of all natural  
 2 persons in the states of California, Illinois, Missouri, and Pennsylvania whose Website  
 3 Communications were intercepted through the use of Session Replay Code embedded in  
 4 [www.zillow.com](http://www.zillow.com) (the “State Subclasses”) (the “Nationwide Class” and “State Subclasses” are  
 5 collectively referred to as the “Classes”). Plaintiffs seek all civil remedies provided under the  
 6 causes of action, including but not limited to compensatory, statutory, and/or punitive damages,  
 7 declaratory and injunctive relief, and attorneys’ fees and costs.

### 8 **PARTIES**

9 5. Plaintiff Natalie Perkins is a citizen of South Carolina and at all times relevant to  
 10 this action, resided and was domiciled in York County, South Carolina.

11 6. Plaintiff Kenneth Hasson is a citizen of Pennsylvania, and at all times relevant to  
 12 this action, resided and was domiciled in Lawrence County, Pennsylvania.

13 7. Plaintiff Jamie Huber is a citizen of Pennsylvania, and at all times relevant to  
 14 this action, resided and was domiciled in Delaware County, Pennsylvania.

15 8. Plaintiff David Kauffman a citizen of California, and at all times relevant to this  
 16 action, resided and was domiciled in San Diego County, California.

17 9. Plaintiff Ashley Popa is a citizen of Pennsylvania, and at all times relevant to  
 18 this action, resided and was domiciled in Lawrence County, Pennsylvania.

19 10. Plaintiff Jill Strezlin is a citizen of Illinois, and at all times relevant to this  
 20 action, resided and was domiciled in Cook County, Illinois.

21 11. Plaintiff Jill Adams is a citizen of Missouri, and at all times relevant to this  
 22 action, resided and was domiciled in Saint Louis County, Missouri.

12. Plaintiff Jill Adams' minor child, H.A., is a citizen of Missouri, and at all times relevant to this action, resided and was domiciled in Saint Louis County, Missouri.

13. Plaintiff Jill Adams has consented to serve as next friend of minor, H.A.

14. Plaintiff Ryan Margulis is a citizen of Illinois, and at all times relevant to this action, resided and was domiciled in Cook County, Illinois.

15. Defendant Zillow Group, Inc. is a corporation organized under the laws of Washington, and its principal place of business is located at 1301 Second Ave., Floor 31, Seattle, Washington 98101. Defendant Zillow Group, Inc. is a citizen of Washington.

16. Defendant Microsoft Corporation is a corporation organized under the laws of Washington, and its principal place of business is located at One Microsoft Way, Redmond, Washington 98052. Defendant Microsoft Corporation is a citizen of Washington.

### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction over this action under 28 U.S.C. §1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the Classes are in excess of \$5,000,000.00, exclusive of interest and costs, there are 100 or more members of the proposed class, and at least one member of the proposed class, including Plaintiffs, are citizens of a state different than Defendants.

18. This Court has personal jurisdiction over Defendants because they are both residents of Washington. In addition, a substantial part of the events and conduct giving rise to Plaintiffs' claims and harm occurred in the state of Washington. The privacy violations complained of herein resulted from Defendants' purposeful and tortious acts directed towards citizens throughout the United States. Additionally, Zillow's Terms of Use specifically state that individuals' Terms of Use are governed by the laws of the State of Washington, without

1 giving effect to its conflict of laws' provisions, and that Defendant Zillow operates the services  
2 it provides to individuals from Zillow's offices in the State of Washington. *See*  
3 <https://www.zillowgroup.com/terms-of-use/>.

4 19. At all relevant times, Defendants knew that their practices would directly result  
5 in collection of information throughout the United States and its territories while individuals  
6 browse Zillow's website. Defendants chose to avail themselves of the business opportunities of  
7 making Zillow's real property and rental advertising services specifically available through  
8 Washington and collecting real-time data from website visit sessions initiated by individuals  
9 located throughout the United States, including in Washington, and the claims alleged herein  
10 arise from those activities.

11 20. Zillow also knows that many users visit and interact with Zillow's websites  
12 while they are physically present in Washington and throughout the United States and its  
13 territories. Both desktop and mobile versions of Zillow's website allow a user to search for  
14 nearby properties by providing the user's "current location," as furnished by the location-  
15 determining tools of the device the user is using or by the user's IP address (*i.e.*, without  
16 requiring the user to manually input an address). Users' employment of automatic location  
17 services in this way means that Zillow is continuously made aware that its website is being  
18 visited by people located throughout the United States, including in Washington, and that such  
19 website visitors are being wiretapped in violation of statutory and common law of Washington  
20 and the United States and its territories.

21 21. Pursuant to 28 U.S.C. § 1391(b)(1), this Court is the proper venue for this action  
22 because a substantial part of the events, omissions, and acts giving rise to the claims herein  
23

1 occurred in this District. In addition, since both Defendants reside in this judicial district, this  
 2 Court is the proper venue for this action under 28 U.S.C. § 1391(b)(1).

### 3 **FACTUAL ALLEGATIONS**

#### 4 **A. Website User and Usage Data Have Immense Economic Value.**

5 22. The “world’s most valuable resource is no longer oil, but data.”<sup>1</sup>

6 23. In 2022, Business News Daily reported that some businesses collect personal  
 7 data (*i.e.*, gender, web browser cookies, IP addresses, and device IDs), engagement data (*i.e.*,  
 8 how consumers interact with a business’s website, applications, and emails), behavioral data  
 9 (*i.e.*, customers’ purchase histories and product usage information), and attitudinal data (*i.e.*,  
 10 data on consumer satisfaction) from consumers.<sup>2</sup> This information is valuable to companies  
 11 because they can use this data to improve customer experiences, refine their marketing  
 12 strategies, capture data to sell it, and even to secure more sensitive consumer data.<sup>3</sup>

13 24. In a consumer-driven world, the ability to capture and use customer data to  
 14 shape products, solutions, and the buying experience is critically important to a business’s  
 15 success. Research shows that organizations who “leverage customer behavior insights  
 16 outperform peers by 85 percent in sales growth and more than 25 percent in gross margin.”<sup>4</sup>

19 <sup>1</sup> *The world’s most valuable resource is no longer oil, but data*, The Economist (May 6, 2017),  
 20 <https://www.economist.com/leaders/2017/05/06/the-worlds-most-valuable-resource-is-no-longeroil-but-data>.

21 <sup>2</sup> Max Freedman, *How Businesses Are Collecting Data (And What They’re Doing With It)*,  
 22 Business News Daily (Aug. 5, 2022), <https://www.businessnewsdaily.com/10625-businesses-collecting-data.html>.

22 <sup>3</sup> *Id.*

23 <sup>4</sup> Brad Brown, Kumar Kanagasabai, Prashant Pant & Goncalo Serpa Pinto, *Capturing value from your customer data*, McKinsey (Mar. 15, 2017), <https://www.mckinsey.com/business-functions/quantumblack/our-insights/capturing-value-from-your-customer-data>.

25. In 2013, the Organization for Economic Cooperation and Development (“OECD”) even published a paper entitled “Exploring the Economics of Personal Data: A Survey of Methodologies for Measuring Monetary Value.”<sup>5</sup> In this paper, the OECD measured prices demanded by companies concerning user data derived from “various online data warehouses.”<sup>6</sup>

26. OECD indicated that “[a]t the time of writing, the following elements of personal data were available for various prices: USD 0.50 cents for an address, USD 2 [i.e. \$2] for a date of birth, USD 8 for a social security number (government ID number), USD 3 for a driver’s license number and USD 35 for a military record. A combination of address, date of birth, social security number, credit record and military is estimated to cost USD 55.”<sup>7</sup>

**B. Website Users Have a Reasonable Expectation of Privacy in Their Interactions with Websites.**

27. Consumers are skeptical and are wary about their data being collected. A report released by KPMG shows that “a full 86% of the respondents said they feel a growing concern about data privacy, while 78% expressed fears about the amount of data being collected.”<sup>8</sup>

28. Another recent paper also indicates that most website visitors will assume their detailed interactions with a website will be used only by the website and will not be shared with

<sup>5</sup> Exploring the Economics of Personal Data: A Survey of Methodologies for Measuring Monetary Value, OECD Digital Economy Papers, NO. 220 (Apr. 2, 2013), <https://www.oecdilibrary.org/docserver/5k486qtxldmq-en.pdf>.

<sup>6</sup> *Id.* at 25.

<sup>7</sup> *Id.*

<sup>8</sup> Lance Whitney, *Data privacy is a growing concern for more consumers*, TechRepublic (Aug. 17, 2021), <https://www.techrepublic.com/article/data-privacy-is-a-growing-concern-for-more-consumers/>.

1 a party they know nothing about.<sup>9</sup> As such, website visitors reasonably expect that their  
 2 interactions with a website should not be released to third parties unless explicitly stated.<sup>10</sup>

3 29. Privacy polls and studies show that a majority of Americans consider one of the  
 4 most important privacy rights to be the need for an individual's affirmative consent before a  
 5 company collects and shares its customers' data.

6 30. A recent study by Consumer Reports shows that 92% of Americans believe that  
 7 internet companies and websites should be required to obtain consent before selling or sharing  
 8 consumers' data, and the same percentage believe internet companies and websites should be  
 9 required to provide consumers with a complete list of the data that has been collected about  
 10 them.<sup>11</sup>

11 31. Moreover, according to a study by the Pew Research Center, a majority of  
 12 Americans, approximately 79%, are concerned about how data is collected about them by  
 13 companies.<sup>12</sup>

14 32. Users act consistently with their expectation of privacy. Following a new rollout  
 15 of the iPhone operating software—which asks users for clear, affirmative consent before  
 16  
 17

---

18 <sup>9</sup> *CUJO AI Recent Survey Reveals U.S. Internet Users Expectations and Concerns Towards*  
 19 *Privacy and Online Tracking*, CUJO (May 26, 2020), <https://www.prnewswire.com/news-releases/cujo-ai-recent-survey-reveals-us-internet-users-expectations-and-concerns-towards-privacy-and-online-tracking-301064970.html>.

20 <sup>10</sup> Frances S. Grodzinsky, Keith W. Miller & Marty J. Wolf, *Session Replay Scripts: A Privacy*  
*Analysis*, The Information Society, 38:4, 257, 258 (2022).

21 <sup>11</sup> *Consumers Less Confident About Healthcare, Data Privacy, and Car Safety, New Survey*  
 22 *Finds*, Consumer Reports (May 11, 2017), <https://www.consumerreports.org/consumerreports/consumers-less-confident-about-healthcare-data-privacy-and-car-safety/>.

23 <sup>12</sup> *Americans and Privacy: Concerned, Confused, and Feeling Lack of Control Over Their*  
*Personal Information*, Pew Research Center, (Nov. 15, 2019),  
<https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-Confusedand-feeling-lack-of-control-over-their-personal-information/>.



1 allowing companies to track users—85 percent of worldwide users and 94 percent of U.S. users  
2 chose not to allow such tracking.<sup>13</sup>

3 **C. How Session Replay Code Works.**

4 33. Session Replay Code, such as that implemented in Zillow’s website, enables  
5 website operators to record, save, and replay website visitors’ interactions with a given website.  
6 The clandestinely deployed code provides online marketers and website designers with insights  
7 into the user experience by recording website visitors “as they click, scroll, type or navigate  
8 across different web pages.”<sup>14</sup>

9 34. While Session Replay Code is utilized by websites for some legitimate purposes,  
10 it goes well beyond normal website analytics when it comes to collecting the actual contents of  
11 communications between website visitors and websites. Unlike other online advertising tools,  
12 Session Replay Code allows a website to capture and record nearly every action a website  
13 visitor takes while visiting the website, including actions that reveal the visitor’s personal or  
14 private sensitive data, sometimes even when the visitor does not intend to submit the data to the  
15 website operator, or has not finished submitting the data to the website operator.<sup>15</sup> As a result,  
16 website visitors “aren’t just sharing data with the [web]site they’re on . . . but also with an  
17 analytics service that may be watching over their shoulder.”<sup>16</sup>

18  
19  
20 <sup>13</sup> Margaret Taylor, *How Apple screwed Facebook*, Wired, (May 19, 2021),  
<https://www.wired.co.uk/article/apple-ios14-facebook>.

21 <sup>14</sup> Erin Gilliam Haije, *[Updated] Are Session Recording Tools a Risk to Internet Privacy?*,  
Mopinion (Mar. 7, 2018), <https://mopinion.com/are-session-recording-tools-a-risk-to-internet-privacy/>.

22 <sup>15</sup> *Id.*

23 <sup>16</sup> Eric Ravenscraft, *Almost Every Website You Visit Records Exactly How Your Mouse Moves*,  
Medium (Feb. 5, 2020), <https://onezero.medium.com/almost-every-website-you-visit-records-exactly-how-your-mouse-moves-4134cb1cc7a0>.

1           35.     Session Replay Code such as Microsoft's works by inserting computer code into  
2 the various event handling routines that web browsers use to receive input from users, thus  
3 intercepting the occurrence of actions the user takes. When a website delivers Session Replay  
4 Code to a user's browser, the browser will follow the code's instructions by sending responses  
5 in the form of "event" data to a designated third-party server. Typically, the server receiving  
6 the event data is controlled by the third-party entity that wrote the Session Replay Code, rather  
7 than the owner of the website where the code is installed.

8           36.     The types of events captured by Session Replay Code vary by specific product  
9 and configuration, but in general are wide-ranging and can encompass virtually every user  
10 action, including all mouse movements, clicks, scrolls, zooms, window resizes, keystrokes, text  
11 entries, and numerous other forms of a user's navigation and interaction through the website.  
12 To permit a reconstruction of a user's visit accurately, the Session Replay Code must be  
13 capable of capturing these events at hyper-frequent intervals, often just milliseconds apart.  
14 Events are typically accumulated and transmitted in blocks periodically throughout the user's  
15 website session, rather than after the user's visit to the website is completely finished.

16           37.     Unless specifically masked through configurations chosen by the website owner,  
17 some visible contents of the website may also be transmitted to the Session Replay Provider.

18           38.     Once the events from a user session have been recorded by a Session Replay  
19 Code, a website operator can view a visual reenactment of the user's visit through the Session  
20 Replay Provider, usually in the form of a video, meaning that "[u]nlike typical analytics  
21  
22  
23

1 services that provide aggregate statistics, these scripts are intended for the recording and  
2 playback of individual browsing sessions.”<sup>17</sup>

3 39. Because most Session Replay Codes will by default indiscriminately capture the  
4 maximum range of user-initiated events and content displayed by the website, researchers have  
5 found that a variety of highly sensitive information can be captured in event responses from  
6 website visitors, including medical conditions, credit card details, and other personal  
7 information displayed or entered on webpages.<sup>18</sup>

8 40. Most alarming, Session Replay Code may capture data that the user did not even  
9 intentionally transmit to a website during a visit, and then make that data available to website  
10 owners when they access the session replay through the Session Replay Provider. For example,  
11 if a user writes information into a text form field, but then chooses not to click a “submit” or  
12 “enter” button on the website, the Session Replay Code may nevertheless cause the non-  
13 submitted text to be sent to the designated event-response-receiving server before the user  
14 deletes the text or leaves the page. This information will then be viewable to the website owner  
15 when accessing the session replay through the Session Replay Provider.

16 41. Session Replay Code does not necessarily anonymize user sessions, either.

17 42. First, if a user’s entry of personally identifying information is captured in an  
18 event response, that data will become known and visible to both the Session Replay Provider  
19 and the website owner.

20  
21  
22 <sup>17</sup> Steven Englehardt, *No boundaries: Exfiltration of personal data by session-replay scripts*,  
23 Freedom to Tinker (Nov. 15, 2017), <https://freedom-to-tinker.com/2017/11/15/no-boundaries-exfiltration-of-personal-data-by-session-replay-scripts/>.

<sup>18</sup> *Id.*

1           43.     Second, if a website displays user account information to a logged-in user, that  
2 content may be captured by Session Replay Code.

3           44.     Third, some Session Replay Providers explicitly offer website owners cookie  
4 functionality that permits linking a session to an identified user, who may be personally  
5 identified if the website owner has associated the user with an email address or username.<sup>19</sup>

6           45.     Session Replay Providers often create “fingerprints” that are unique to a  
7 particular user’s combination of computer and browser settings, screen configuration, and other  
8 detectable information. The resulting fingerprint, which is often unique to a user and rarely  
9 changes, are collected across all sites that the Session Replay Provider monitors.

10          46.     When a user eventually identifies themselves to one of these websites (such as  
11 by filling in a form), the provider can then associate the fingerprint with the user identity and  
12 can then back-reference all of that user’s other web browsing across other websites previously  
13 visited, including on websites where the user had intended to remain anonymous—even if the  
14 user explicitly indicated that they would like to remain anonymous by enabling private  
15 browsing.

16          47.     In addition to the privacy invasions caused by the diversion of user  
17 communications with websites to third-party Session Replay Providers, Session Replay Code  
18 also exposes website visitors to identity theft, online scams, and other privacy threats.<sup>20</sup> Indeed,  
19 “[t]he more copies of sensitive information that exist, the broader the attack surface, and when  
20

21 \_\_\_\_\_  
22 <sup>19</sup> *Id.*; see also *FS.identify – Identifying users*, FullStory, <https://help.fullstory.com/hc/en-us/articles/360020828113>, (last visited Sep. 8, 2022).

23 <sup>20</sup> Juha Sarrinen, *Session Replay is a Major Threat to Privacy on the Web*, itnews (Nov. 16, 2017), <https://www.itnews.com.au/news/session-replay-is-a-major-threat-to-privacy-on-the-web-477720>.

1 data is being collected [ . . . ] it may not be stored properly or have standard protections”  
 2 increasing “the overall risk that data will someday publicly leak or be breached.”<sup>21</sup>

3 48. The privacy concerns arising from Session Replay Code are not theoretical or  
 4 imagined. The CEO and founder of LOKKER, a provider of data privacy and compliance  
 5 solutions has said “[consumers] should be concerned” about the use of Session Replay Code  
 6 because “they won’t know these tools are operating ‘behind the scenes’ of their site visit” and  
 7 “even if the company disclosed that they are using these tools, consumers wouldn’t likely be able  
 8 to opt-out and still use the site.”<sup>22</sup>

9 49. Indeed, the news is replete with examples of the dangers of Session Replay Code.  
 10 For example, in 2019, the App Analyst, a mobile expert who writes about his analyses of popular  
 11 apps, found that Air Canada’s iPhone app wasn’t properly masking the session replays they were  
 12 sent, exposing unencrypted credit card data and password information.<sup>23</sup> This discovery was  
 13 made just weeks after Air Canada said its app had a data breach, exposing 20,000 profiles.<sup>24</sup>

14 50. Further, multiple companies have removed Session Replay Code from their  
 15 websites after it was discovered the Session Replay Code captured highly sensitive information.  
 16 For instance, in 2017, Walgreens stopped sharing data with a Session Replay Provider after it  
 17 was discovered that the Session Replay Provider gained access to website visitors’ sensitive  
 18

19 <sup>21</sup> Lily Hay Newman, *Covert ‘Replay Sessions’ Have Been harvesting Passwords by Mistake*,  
 20 WIRED (Feb. 26, 2018), [https://www.wired.com/story/covert-replay-sessions-harvesting-](https://www.wired.com/story/covert-replay-sessions-harvesting-passwords/)  
 21 [passwords/](https://www.wired.com/story/covert-replay-sessions-harvesting-passwords/).

22 <sup>22</sup> Mark Huffner, *Is ‘session replay software’ a privacy threat or just improving your web*  
 23 *experience*, Consumer Affairs (Oct. 25, 2022), [https://www.consumeraffairs.com/news/is-](https://www.consumeraffairs.com/news/is-session-replay-software-a-privacy-threat-or-just-improving-your-web-experience-102522.html)  
 24 [session-replay-software-a-privacy-threat-or-just-improving-your-web-experience-102522.html](https://www.consumeraffairs.com/news/is-session-replay-software-a-privacy-threat-or-just-improving-your-web-experience-102522.html).

25 <sup>23</sup> Zach Whittaker, *Many Popular iPhone Apps Secretly Record Your Screen Without Asking*,  
 TechCrunch (Feb. 6, 2019), [https://techcrunch.com/2019/02/06/iphone-session-replay-](https://techcrunch.com/2019/02/06/iphone-session-replay-screenshots/)  
 26 [screenshots/](https://techcrunch.com/2019/02/06/iphone-session-replay-screenshots/).

27 <sup>24</sup> *Id.*

1 information.<sup>25</sup> Indeed, despite Walgreens’ extensive use of manual redactions for displayed and  
 2 inputted data, the Session Replay Provider still gained access to full names of website visitors,  
 3 their medical conditions, and their prescriptions.<sup>26</sup>

4 51. Following the Walgreens incident, Bonobos, a men’s clothing retailer, announced  
 5 that it was eliminating data sharing with a Session Replay Provider after it was discovered that  
 6 the Session Replay Provider captured credit card details, including the cardholder’s name and  
 7 billing address, and the card’s number, expiration, and security code from the Bonobos’  
 8 website.<sup>27</sup>

9 52. Recognizing the privacy concerns posed by Session Replay Code, in 2019 Apple  
 10 required app developers to remove or properly disclose the use of analytics code that allow app  
 11 developers to record how a user interacts with their iPhone apps or face immediate removal  
 12 from the app store.<sup>28</sup> In announcing this decision, Apple stated: “Protecting user privacy is  
 13 paramount in the Apple ecosystem. Our App Store Review Guidelines require that apps request  
 14 explicit user consent and provide a clear visual indication when recording, logging, or otherwise  
 15 making a record of user activity.”<sup>29</sup>

20 <sup>25</sup> Nitasha Tiku, *The Dark Side of ‘Replay Sessions’ That Record Your Every Move Online*,  
 21 WIRED (Nov. 16, 2017), <https://www.wired.com/story/the-dark-side-of-replay-sessions-that-record-your-every-move-online/>.

22 <sup>26</sup> Englehardt, *supra* note 17.

23 <sup>27</sup> Tiku, *supra* note 25.

<sup>28</sup> Zack Whittaker, *Apple Tells App Developers to Disclose or Remove Screen Recording Code*,  
 TechCrunch (Feb. 7, 2019), <https://techcrunch.com/2019/02/07/apple-glassbox-apps/>.

<sup>29</sup> *Id.*

**D. Defendants Secretly Wiretap Zillow’s Website Visitors’ Electronic Communications.**

53. Zillow operates the Zillow website. Zillow is the “leading online residential real estate” marketplace in the United States for consumers, connecting them to the information and real estate professionals they need to buy, sell, or rent a home.<sup>30</sup>

54. Zillow has become “synonymous with residential real estate.”<sup>31</sup> Zillow’s website is the most popular real estate website in the United States, with over thirty-six million unique monthly visitors<sup>32</sup> and more than 135 million properties are listed on its website.<sup>33</sup> According to a 2021 Google Trends report, “[t]oday more people search ‘Zillow’ than ‘real estate.’”<sup>34</sup>

55. However, unbeknownst to the millions of individuals perusing Zillow’s real estate listings, Zillow intentionally procures and embeds various Session Replay Codes from Microsoft and other Session Replay Providers on its website to track and analyze website user interactions with Zillow’s website.

56. Zillow has engaged with Microsoft to employ its Session Replay Provider on Zillow’s website.

57. Microsoft is the owner and operator of a Session Replay Code called Clarity, which provides basic information about website user sessions, interactions, and engagement, and breaks down users by device type, county, and other dimensions.<sup>35</sup>

<sup>30</sup> Zillow Group, Inc., *Form 10-K* (Dec. 31, 2021), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001617640/87bbbf30-39cb-4eb7-acdc-1b51265b9687.pdf> (“Zillow 10-K”).

<sup>31</sup> *Id.*

<sup>32</sup> *Most Popular Real Estate Websites in the United States as of October 2021, Based on Unique Monthly Visits*, Statista, <https://www.statista.com/statistics/381468/most-popular-real-estate-websites-by-monthly-visits-usa/>, (last visited Sep. 8, 2022).

<sup>33</sup> Zillow 10-K, *supra*, note 1.

<sup>34</sup> *Id.*

<sup>35</sup> Jono Alderson, *An Introduction to Microsoft Clarity*, Yoast, <https://yoast.com/introduction-microsoft-clarity/#h-what-is-microsoft-clarity>, (last visited Sep. 8, 2022).

1 58. Microsoft states that “Clarity is a user behavior analytics tool that helps you  
2 understand how users interact with your website. Supported features include:

- 3 • Session Recordings
- 4 • Heatmaps (or heat maps)
- 5 • ML Insights.<sup>36</sup>

6 59. Microsoft further represents that Clarity “offers many unique features that help  
7 you understand user behavior: ...Data is analyzed and ready to view in near real time, so you  
8 don't have to wait...Deep AI and Machine Learning algorithm-powered insights help you  
9 analyze user behavior efficiently.<sup>37</sup>

10 60. Specifically, Clarity captures a user’s interactions with a website, logging every  
11 website user’s mouse movements and clicks, scrolling window resizing, user inputs, and  
12 more.<sup>38</sup> Indeed, Clarity organizes the information it captures into over 30 different categories  
13 including: the date a user visited the website, the device the user accessed the website on, the  
14 type of browser the user accessed the website on, the operating system of the device used to  
15 access the website, the country where the user accessed the website from, a user’s mouse  
16 movements, a user’s screen swipes, text inputted by the user on the website, and how far down  
17 a webpage a user scrolls.<sup>39</sup> Clarity even provides a specific user ID to each website visitor so  
18 their website use and interactions can be monitored over time.<sup>40</sup>

19  
20 <sup>36</sup> *Frequently Asked Questions*, <https://learn.microsoft.com/en-us/clarity/faq>, (last visited April 4, 2023).

21 <sup>37</sup> *Id.*

22 <sup>38</sup> *Clarity Data Collection*, Microsoft, <https://docs.microsoft.com/en-us/clarity/clarity-data>, (last visited Aug. 24, 2022).

23 <sup>39</sup> *Filters Overview*, Microsoft (Jul. 26, 2022), <https://docs.microsoft.com/en-us/clarity/clarity-filters>.

<sup>40</sup> *Id.*



1           61.     The user information collected in real time and recorded by Clarity can then be  
 2 used to play back a user’s journey through a website, showing how they interacted with site  
 3 navigation, calls to action, search features, and other on-page elements.<sup>41</sup> Put differently, the  
 4 information Clarity captures can be translated into a simulation video of how a user interacts  
 5 with a website.

6           62.     Clarity also uses the information captured to create detailed heatmaps of a  
 7 website that provide information about which elements of a website have high user  
 8 engagement, how far website users scrolled on the website, and the total clicks within a given  
 9 area on the website.<sup>42</sup>

10          63.     As such, Clarity collected and continues to collect Plaintiffs’ and the Classes’  
 11 highly personal information and substantive communications that can be tied to directly to a  
 12 website user’s identity as it monitors, records, and collects a website user’s every move.

13          64.     Clarity offers websites three standard approaches when it comes to masking  
 14 sensitive information collected from a user’s interactions with a website: strict (all text entered  
 15 by a user is purportedly masked), balanced (sensitive text entered into certain specifically pre-  
 16 coded fields, such as passwords and credit card information, is masked), and relaxed (no text  
 17 entered by a user is masked).<sup>43</sup> When Clarity is set to “relaxed,” whatever information a user  
 18 enters into a field on a website can be previewed in session recordings.<sup>44</sup> Additionally, Clarity

19 \_\_\_\_\_  
 20 <sup>41</sup> Roger Montti, *Microsoft Clarity Analytics: Everything You Need to Know*, SEJ (Jan. 19,  
 2022), [https://www.searchenginejournal.com/microsoft-clarity-analytics-](https://www.searchenginejournal.com/microsoft-clarity-analytics-overview/419311/#close)  
 21 [overview/419311/#close](https://www.searchenginejournal.com/microsoft-clarity-analytics-overview/419311/#close).

22 <sup>42</sup> Haley Walden, *What is Microsoft Clarity? (& How Can it Improve SEO?)*, Elegant Themes  
 (Jun. 12, 2022), [https://www.elegantthemes.com/blog/wordpress/microsoft-clarity-improve-](https://www.elegantthemes.com/blog/wordpress/microsoft-clarity-improve-seo)  
 23 [seo](https://www.elegantthemes.com/blog/wordpress/microsoft-clarity-improve-seo).

<sup>43</sup> *Microsoft Clarity, An Essential Part of Customer Experience Optimization*, TechAir (Aug.  
 17, 2022), <https://privacy.microsoft.com/en-US/privacystatement>.

<sup>44</sup> *Id.*

1 enables websites to select specific elements and content to mask or unmask, customizing the  
2 standard masking approaches.<sup>45</sup>

3 65. However, even when a website operator selects the “strict” and “balanced”  
4 settings, Clarity is nevertheless capable of collecting text entered by users, including text  
5 containing sensitive information.

6 66. In order for Clarity to capture website visitors’ interactions with a website,  
7 Clarity’s JavaScript must be installed on the website, either directly hard-coded on the website  
8 or on a third-party platform, such as Google Tag Manager.<sup>46</sup> Clarity is embedded in a website  
9 by adding its JavaScript code into the HyperText Markup Language (HTML) underlying the  
10 website. As with all HTML code, Clarity is not visible to a user who is navigating a webpage  
11 through a standard browser’s default view because by design a browser will interpret HTML,  
12 without showing it, in order to render a more user-friendly display that is the designer’s  
13 intended presentation of the website to a visitor.

14 67. Clarity can be revealed to technical users who understand web technologies and  
15 can enable alternative display modes that will show underlying HTML, such as “developer  
16 tools,” but even then, the users would first need to know what they are looking for to find the  
17 script. Developer tools are intended for website programmers, and are generally not meaningful  
18 or comprehensible by those without a background in computer science.

22 <sup>45</sup> *Masking Content*, Microsoft (Jul. 18, 2022), <https://docs.microsoft.com/en-us/clarity/clarity-masking>.

23 <sup>46</sup> *Set Up Clarity*, Microsoft (Jul. 18, 2022), <https://docs.microsoft.com/en-us/clarity/clarity-setup>.

68. Once Clarity's JavaScript is installed on a website, Clarity begins collecting website user's interactions within two hours of installation.<sup>47</sup> Once deployed, the wiretapping commences immediately on the visitor's web browser when the visitor loads a website in their browser.

69. Data collected by Clarity is then stored in the Microsoft Azure cloud service and Microsoft has access to that information.<sup>48</sup>

70. Zillow's procurement and use of Microsoft Clarity's Session Replay Code, and procurement and use of other Session Replay Codes through various Session Replay Providers to collect Plaintiffs' and the Classes' Website Communications, constitutes wiretapping in violation of Washington statutory and common law as well as other states' statutory and common law.

#### **E. Plaintiffs' and Class Members' Experience.**

71. Plaintiff Perkins routinely visits Zillow's website to search for properties using her computer, and she has done so numerous times since 2010. During her visits, including visits made throughout 2021, Plaintiff Perkins has substantively engaged with Zillow's website to browse homes available for purchase, update her housing information, and has entered personal and financial information, such as name, address, date of birth, phone number, credit score range, current loans, and estimates of loans into text fields and Zillow questionnaires.

72. Plaintiff Hasson routinely visits Zillow's website to search for properties using his computer, and he has done so numerous times throughout 2022. During his visits, including visits made during 2022, Plaintiff Hasson has substantively engaged with Zillow's website to

---

<sup>47</sup> *Frequently Asked Questions*, Microsoft, <https://docs.microsoft.com/en-us/clarity/faq>, (last visited Aug. 24, 2022).

<sup>48</sup> *Id.*

1 browse for homes and has entered personal and financial information, such as name, address,  
2 date of birth, phone number, credit card, and other financial information into text fields.

3 73. Plaintiff Huber routinely visits Zillow's website to search for properties using her  
4 computer and/or mobile device, and she has done so numerous times since 2019. During her  
5 visits, including visits made since 2019, Plaintiff Huber has substantively engaged with Zillow's  
6 website to browse homes available for purchase, update her housing information, and has entered  
7 personal and financial information, such as name, address, date of birth, phone number, credit  
8 score range, current loans, and estimates of loans into text fields and Zillow questionnaires.

9 74. Plaintiff Kauffman routinely visits Zillow's website to search for properties using  
10 his computer, tablet, and mobile device, and he has done so numerous times dating back to 2013.  
11 During his visits, including visits made during 2022, Plaintiff Kauffman has substantively  
12 engaged with Zillow's website to browse for homes to purchase, using filters to search homes he  
13 by zip code, by home type, to update information regarding his owned claimed properties such  
14 as, adding square footage, home improvements made to the property to increase its value, submit  
15 offers to purchase properties, and has entered personal and information, such as name, address,  
16 and phone number into text fields.

17 75. Plaintiff Popa routinely visits Zillow's website to search for properties using her  
18 computer and/or mobile device, and she has done so numerous times throughout 2022. During  
19 her visits, including visits made during 2022, Plaintiff Popa has substantively engaged with  
20 Zillow's website and has entered personal and financial information, such as name, address, date  
21 of birth, phone number, credit card, and other financial information into text fields.

22 76. Plaintiff Strezlin routinely visits Zillow's website to search for properties using  
23 her computer and/or mobile device, and she has done so numerous times throughout 2022. During

1 her visits, including visits made during 2022, Plaintiff Strezlin has substantively engaged with  
2 Zillow's website and has entered personal and financial information, such as name, address, date  
3 of birth, phone number, credit card, and other financial information into text fields.

4 77. Plaintiff Adams routinely visits Zillow's website to search for properties using  
5 her computer and/or mobile device, and she has done so numerous times throughout 2022. During  
6 her visits, including visits made prior to 2022, Plaintiff Adams has substantively engaged with  
7 Zillow's website and has entered information into text fields.

8 78. Plaintiff Adams minor child H.A. routinely visits Zillow's website to search for  
9 properties using her mobile device, and she has done so numerous times throughout 2022. During  
10 her visits, including visits made during 2022, Plaintiff Adams minor child H.A. has substantively  
11 engaged with Zillow's website and has entered information into text fields.

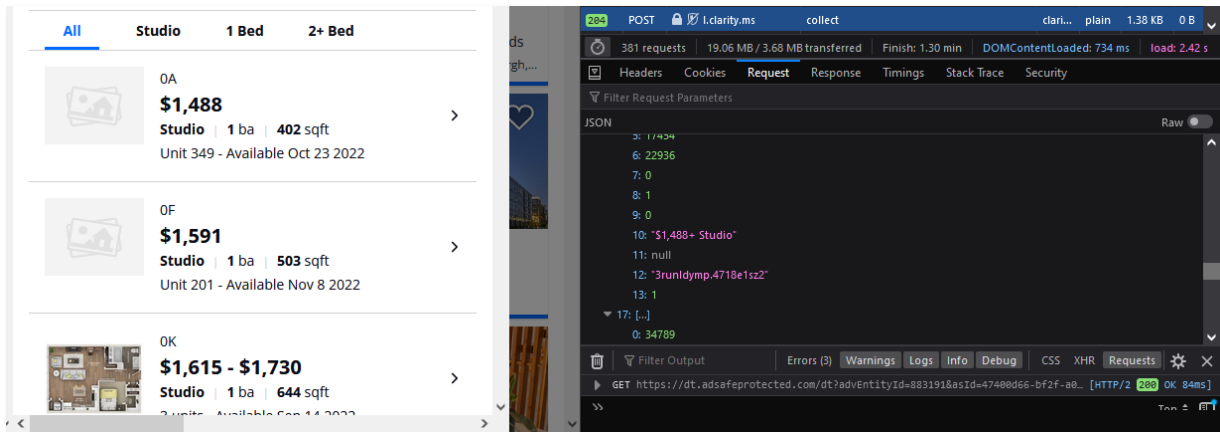
12 79. Plaintiff Margulis routinely visits Zillow's website to search for properties using  
13 his computer and/or mobile device, and he has done so numerous times throughout 2021-2022.  
14 During his visits, Plaintiff Margulis has substantively engaged with Zillow's website and has  
15 entered personal and financial information, such as name and email address into text fields.

16 80. While visiting Zillow's website, Plaintiffs fell victim to Defendants' unlawful  
17 monitoring, recording, and collection of Plaintiffs' Website Communications with Zillow's  
18 website.

19 81. Unbeknownst to Plaintiffs, and without Plaintiffs' consent, Zillow procures and  
20 embeds Microsoft's Session Replay Code on its website. Plaintiffs' Website Communications  
21 were captured automatically and instantaneously by Microsoft's Session Replay Code and sent  
22 to various Session Replay Providers.  
23

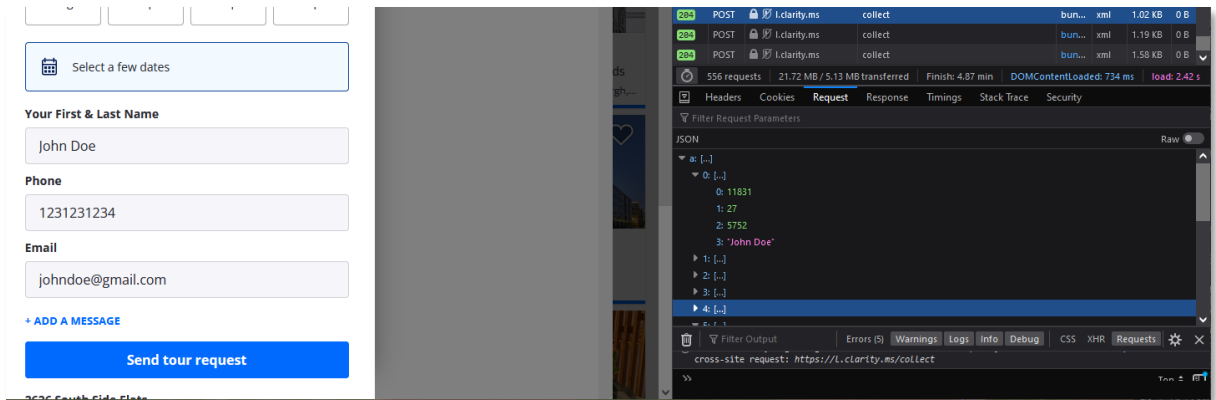
82. Further, without Plaintiffs' consent, Zillow procured Session Replay Providers, including Microsoft, to obtain certain information about their devices and browser, and create a unique ID and profile for them.

83. For example, when visiting Zillow's website, if a website user views a certain piece of property for rent or sale, that information is captured by the Session Replay Codes embedded on the website:



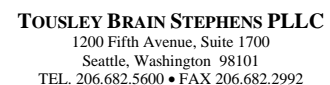
*Depicting information sent to one of the Service Replay Providers—Microsoft—through a Service Replay Code—Clarity—after viewing a Studio apartment priced at \$1,488 while visiting [www.zillow.com](http://www.zillow.com).*

84. Similarly, when visiting Zillow's website, if a user enters personal information in a text box to schedule a tour, that information is captured by the Session Replay Codes embedded on the website:



*Depicting information sent to one of the Service Replay Providers—Microsoft—through a Service Replay Code—Clarity—after entering a name (purple text) to a text box to schedule a tour of a property.*

85. The wiretapping by the Session Replay Codes are ongoing during the visit, and the Session Replay Code intercepts the contents of these communications between Plaintiffs and Zillow with real time instantaneous transmissions to Microsoft's Session Replay software and other Session Replay Providers, as illustrated below, in which only 30 milliseconds were required to send a packet of event response data, which would indicate whatever the website user had just done:





1 Code will, by its very nature and purpose, intercept the contents of communications between  
2 the website's visitors and the website owner.

3 90. For example, even with heightened masking enabled, Defendants—through the  
4 use of Session Replay Providers' Code—are still able to learn through the intercepted data  
5 exactly which pages a user navigates to, how the user moves through the page (such as which  
6 areas the user zooms in on or interacted with), and additional substantive information.

7 91. As a specific example, if a user types a particular address or zip code into  
8 Zillow's main search bar and initiates a search, even if the text entered into the search bar is  
9 masked, Session Replay Providers will still learn what is entered into the bar as soon as the  
10 search result page loads. This is so because the responsive search results will be displayed on  
11 the subsequent page, and the responsive content generated by Zillow will repeat the searched  
12 information back on the generated page. That information will not be masked even if user-  
13 inputted text is fully masked in a text field.

14 92. The Session Replay Code, like Clarity, procured by Zillow is an electronic,  
15 mechanical, or other analogous device in that the Session Replay Code, monitors, collects, and  
16 records the content of electronic computer-to-computer communications between Plaintiffs'  
17 mobile computer and/or mobile device and the computer servers and hardware utilized by Zillow  
18 to operate its website.

19 93. Alternatively, even if the Session Replay Code itself were not a device, the  
20 Session Replay Code, like Clarity, is software designed to alter the operation of a website  
21 visitor's computer or mobile phone by instructing the hardware components of that physical  
22 device to run the processes that ultimately intercept the visitor's communications and transmit  
23 them to the third-party Session Replay Provider, without the visitor's knowledge.

1           94.     The Session Replay Code procured by Zillow and provided by Microsoft is not a  
 2 website cookie, analytics tool, tag, web beacon, or other similar technology. Instead, the data  
 3 collected by the Session Replay Code identified specific information inputted and content  
 4 viewed, and thus revealed personal and sensitive information about website visitors' Internet  
 5 activity and habits. As such, by the very nature of its operation, the Session Replay Code is a  
 6 device used to intercept electronic communications.

7           95.     The Website Communications intentionally monitored, collected, and recorded  
 8 by Zillow and Microsoft was content generated through Plaintiffs' and Class Members' use,  
 9 interaction, and communication with Zillow's website relating to the substance and/or meaning  
 10 of Plaintiffs' and Class Members' communications with the website, i.e., mouse clicks and  
 11 movements, keystrokes, search terms, information inputted by Plaintiffs and Class Members,  
 12 and pages and content clicked on and viewed by Plaintiffs and Class Members. This  
 13 information is "content" and is not merely record information regarding the characteristics of  
 14 the message that is generated in the course of the communication, nor is it simply information  
 15 disclosed in the referrer headers. The mere fact that Zillow and Microsoft value this content,  
 16 and monitors, intercepts and records it, confirms these communications are content that convey  
 17 substance and meaning Zillow, and in turn, any Session Replay Provider that receives the  
 18 intercepted information.

19           **F.     Plaintiffs and Class Members Did Not Consent to the Interception of Their**  
 20           **Electronic Communications**

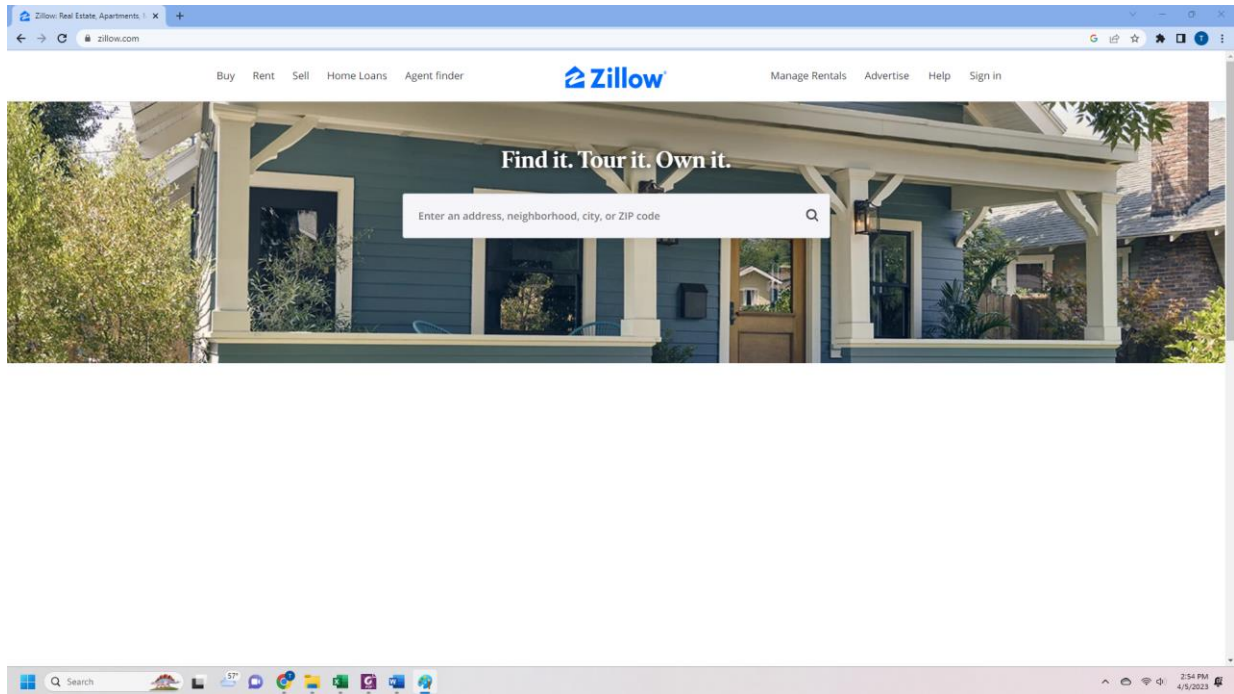
21           96.     Plaintiffs and Class Members did not provide prior consent to Defendants'  
 22 interception of their Website Communications, nor could they, as the interception begins  
 23 *immediately* upon arriving at Zillow's website.

1           97. Defendants did not ask website visitors, including Plaintiffs and Class Members,  
2 for prior consent before wiretapping their Website Communications. Indeed, Plaintiffs and  
3 Class Members have no idea upon arriving at the website that Zillow is using Session Replay  
4 Code to monitor, collect, and record their Website Communications because the Session  
5 Replay Code is seamlessly incorporated and embedded into Zillow's website.

6           98. Further, while Zillow may purport to maintain a "Privacy Policy," the Privacy  
7 Policy is insufficient for Plaintiffs and Class Members to furnish prior consent. First, because  
8 the wiretapping begins the moment a website user visits Zillow's website, Plaintiffs and Class  
9 Members had no opportunity to review the Privacy Policy before they were wiretapped and  
10 therefore could not have opted out of or prevented the wiretapping before it occurred.

11 Additionally, a reasonable person would not be on notice of the terms of Zillow's Privacy  
12 Policy by way of normal interaction with the website. Zillow's Privacy Policy is contained on  
13 the homepage of Zillow's website, in small low-contrasting font at the bottom of the page. As  
14 such, a reasonable person could browse for properties on Zillow's website without ever being  
15 on notice of the purported Privacy Policy. Additionally, the search bar is located within a  
16 picture and following the picture is a block of blank space. Unless the user were to double

1 check and affirmatively scroll down to see if there is any additional content on the page, the  
 2 user would not be aware there is any content on the webpage following the photograph.



14 99. Moreover, the dropdown options at the top of the webpage do not include within  
 15 the main categories, nor the dropdown options, any indication of a Privacy Policy.

### 16 **CLASS ACTION ALLEGATIONS**

17 100. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23  
 18 individually and on behalf of the following nationwide class (“Nationwide Class” or the “Class”):

#### 19 **Nationwide Class**

20 All natural persons in the United States and its territories whose Website  
 21 Communications were captured through the use of Session Replay Code  
 22 embedded in [www.zillow.com](http://www.zillow.com)  
 23

101. Plaintiffs, in the alternative, pursuant to Federal Rule of Civil Procedure 23 individually and on behalf of the following statewide classes (“Statewide Subclasses” or “Subclasses”):

#### Statewide Subclasses

All natural persons located in the states of California, Illinois, Missouri, Pennsylvania Website Communications were captured through the use of Session Replay Code embedded in [www.zillow.com](http://www.zillow.com)

(collectively with the Nationwide Class, the “Classes”) for violations of: the Pennsylvania Wiretap and Electronic Surveillance Control Act (Count 3), Invasion of Privacy – Intrusion Upon Seclusion (Pennsylvania Common Law) (Count 4), Illinois Eavesdropping Act (Count 5), the Illinois Consumer Fraud and Deceptive Business Practices Act (Count 6), Invasion of Privacy – Intrusion Upon Seclusion (Illinois Common Law) (Count 7), Violation of Missouri Wiretap Act (Count 8), Missouri’s Merchandising Practices Act (Count 9), Invasion of Privacy – Intrusion Upon Seclusion (Missouri Common Law) (Count 10), and Unlawful Wiretapping and Interception of Electronic Communication, California Penal Code § 631 (Count 11).

102. Excluded from the Classes are Defendants, their parents, subsidiaries, affiliates, officers, and directors, all persons who make a timely election to be excluded from the Classes, the judge to whom this case is assigned and any immediate family members thereof, and the attorneys who enter their appearance in this action.

#### Rule 23(a)

103. This action may properly be maintained as a class action and satisfies the requirements of Fed. R. Civ. P. 23(a): numerosity, commonality, typicality, and adequacy.

104. **Numerosity:** The members of the Class and each Subclass are so numerous that individual joinder of all Class members is impracticable. The precise number of Class members

1 and their identities may be obtained from the books and records of Defendants or other Session  
2 Replay Providers.

3       105. **Commonality:** This action involves questions of law and fact that are common  
4 to the individual Class and Subclass members. Such common questions include, but are not  
5 limited to: (a) whether Zillow procured Microsoft and other Session Replay Providers to intercept  
6 Zillow's website visitors' Website Communications; (b) whether Defendants intentionally  
7 disclosed the intercepted Website Communications of Zillow's website users; (c) whether  
8 Defendants acquired the contents of website users' Website Communications without their  
9 consent; (d) whether Defendants' conduct violates Washington Wiretapping Statute, Wash. Rev.  
10 Code §9.73.030, *et seq.*; or, in the alternative the state wiretap statutes identified below; (e)  
11 whether Plaintiffs and the Class members are entitled to equitable relief; and (f) whether Plaintiffs  
12 and the Class members are entitled to actual, statutory, punitive, or other forms of damages, and  
13 other monetary relief, and/or declaratory and/or injunctive relief.

14       106. **Typicality:** Plaintiffs' claims are typical of the other Class and Subclass  
15 members' claims because, among other things, all Class and Subclass members were comparably  
16 injured through the uniform prohibited conduct described above. For instance, Plaintiffs and each  
17 member of the Class and Subclass had their communications intercepted in violation of the law  
18 and their right to privacy. This uniform injury and the legal theories that underpin recovery make  
19 the claims of Plaintiffs and the members of the Class and Subclass typical of one another.

20       107. **Adequacy of Representation:** Plaintiffs have and will continue to fairly and  
21 adequately represent and protect the interests of the Class and Subclass. Plaintiffs have retained  
22 counsel competent and experienced in complex litigation and class actions, including litigations  
23 to remedy privacy violations. Plaintiffs have no interest that is antagonistic to the interests of the

1 Class and Subclass, and Defendants have no defenses unique to Plaintiffs. Plaintiffs and their  
 2 counsel are committed to vigorously prosecuting this action on behalf of the members of the  
 3 Class and Subclass, and they have the resources to do so. None of the Plaintiffs nor their counsel  
 4 have any interest adverse to the interests of the other members of the Class and Subclass.

5 **Rule 23(b)(3)**

6 108. **Superiority:** This class action is appropriate for certification because class  
 7 proceedings are superior to other available methods for the fair and efficient adjudication of this  
 8 controversy, and joinder of all members of the Classes is impracticable. This proposed class  
 9 action presents fewer management difficulties than individual litigation, and provides the  
 10 benefits of single adjudication, economies of scale, and comprehensive supervision by a single  
 11 court. Class treatment will create economies of time, effort, and expense and promote uniform  
 12 decision-making.

13 109. **Predominance:** Common questions of law and fact predominate over any  
 14 questions affecting only individual Class members. Similar or identical violations, business  
 15 practices, and injuries are involved. Individual questions, if any, pale by comparison, in both  
 16 quality and quantity, to the numerous common questions that dominate this action. For example,  
 17 Defendants' liability and the fact of damages is common to Plaintiffs and each member of the  
 18 Class. If Defendants intercepted Plaintiffs' and Class members' Website Communications, then  
 19 Plaintiffs and each Class member suffered damages by that conduct.

20 110. **Ascertainability:** Members of the Class are ascertainable. Class membership is  
 21 defined using objective criteria and Class members may be readily identified through  
 22 Defendants' books and records or the other Session Replay Providers' books and records.  
 23

**CHOICE OF LAW FOR NATIONWIDE CLAIMS**

111. Defendants’ actions discussed herein were orchestrated and implemented by Zillow and Microsoft at their corporate headquarters in Washington and the conduct complained of was designed, implemented and directed by and radiated from, Washington.

112. The key wrongdoing at issue in this litigation – Zillow’s procurement of Microsoft and other Session Replay Providers to intercept Zillow’s website visitors’ Website Communications; Zillow’s intentional disclosure of intercepted Website Communications of its website users; Zillow’s acquisition of the contents of website users’ Website Communications without their consent; Microsoft’s creation, design, marketing, sale and implementation of Session Replay Software to intercept Website Communications without their consent, Microsoft’s sale of Session Replay Software to Zillow to intercept Website Communications without their consent; and Zillow’s and Microsoft’s violation of the Washington Wiretap Statute emanated from their respective headquarters in Washington.

113. Zillow’s Terms of Use specifically states that the “Terms of Use are governed by the laws of the State of Washington, without giving effect to its conflict of laws’ provisions.” <https://www.zillowgroup.com/terms-of-use/>. Moreover, Zillow states that users of its website “agree to submit to the personal and exclusive jurisdiction and venue in the state and federal courts sitting in King County, Washington for any and all disputes, claims and actions arising from or in connection with the Services or otherwise under these Terms of Use.” <https://www.zillowgroup.com/terms-of-use/>.

114. Washington, which seeks to protect the rights and interests of Washington citizens and consumers located throughout the United States against a company doing business



1 in Washington, has a greater interest in the claims of Plaintiff and the Class than any other state  
2 and is most intimately concerned with the outcome of this litigation.

3 115. Application of Washington law to the Nationwide Class with respect to Plaintiff's  
4 and the Class' claims is neither arbitrary nor fundamentally unfair because Washington has  
5 significant contacts and a significant aggregation of contacts that create a state interest in the  
6 claims of the Plaintiffs and the Nationwide Class.

### 7 **LEGAL CLAIMS**

#### 8 **COUNT I**

#### 9 **Violation of the Washington Wiretapping Statute Wash. Rev. Code §9.73.030, et. seq.**

10 **(By All Plaintiffs On behalf of the Nationwide Class)**

11 116. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

12 117. Plaintiffs bring this claim individually and on behalf of the Nationwide Class  
13 against Defendants.

14 118. The Washington Wiretapping Statute (the "Act") prohibits the interception or  
15 recording any private communication transmitted by telephone, telegraph, radio, or other device  
16 between two or more individuals between points within or without the state by any device  
17 electronic or otherwise designed to record and/or transmit said communication regardless how  
18 such device is powered or actuated, without first obtaining the consent of all the participants in  
19 the communication. Wash. Rev. Code §9.73.030(1)(a).

20 119. The Act further states that "[a]ny person who, directly or by means of a detective  
21 agency or any other agent, violates the provisions of this chapter shall be subject to legal action  
22 for damages, to be brought by any other person claiming that a violation of this statute has injured  
23 his or her business, his or her person, or his or her reputation. A person so injured shall be entitled

1 to actual damages, including mental pain and suffering endured by him or her on account of  
2 violation of the provisions of this chapter, or liquidated damages computed at the rate of one  
3 hundred dollars a day for each day of violation, not to exceed one thousand dollars, and a  
4 reasonable attorney's fee and other costs of litigation." Wash. Rev. Code §9.73.060.

5 120. Zillow and Microsoft are persons for purposes of the Act because they are  
6 corporations.

7 121. Session Replay Code like that licensed by Microsoft and procured by Zillow is a  
8 "device" used for the "designed to record and/or transmit" communications within the meaning  
9 of the Act.

10 122. Plaintiffs' and the Nationwide Class members' intercepted Website  
11 Communications constitute "private communications" within the meaning of the Act.

12 123. Defendants intentionally procure and embed Microsoft's Session Replay Code  
13 and other Session Replay Providers Code on Zillow's website to spy on and, and intercept,  
14 automatically and secretly Plaintiffs and the Nationwide Class Members' electronic interactions  
15 communications with Zillow in real time.

16 124. Plaintiffs' and the Nationwide Class members' electronic communications are  
17 intercepted contemporaneously with their transmission.

18 125. Plaintiffs and the Nationwide Class members did not consent to having their  
19 Website Communications wiretapped.

20 126. Pursuant to Wash. Rev. Code §9.73.060, Plaintiffs and the Nationwide Class  
21 members seek (1) actual damages, not less than liquidated damages computed at the rate of one  
22 hundred dollars a day for each day of violation, not to exceed one thousand dollars, and (2)  
23 reasonable attorneys' fees and other costs of litigation incurred.

127. Defendants' conduct is ongoing, and it continues to unlawfully intercept the communications of Plaintiffs and the Nationwide Class members any time they visit Zillow's website with Microsoft's Session Replay Code enabled without their consent. Plaintiffs and the Nationwide Class members are entitled to declaratory and injunctive relief to prevent future interceptions of their communications and to require Zillow to obtain consent prior to utilizing Microsoft's Session Replay Code and other Session Replay Providers Code to intercept website visitors' electronic communications on Zillow's website.

## **COUNT 2**

### **Invasion of Privacy – Intrusion Upon Seclusion**

**(By All Plaintiffs On behalf of the Nationwide Class)**

128. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

129. Washington common law recognizes the tort of invasion of privacy. The right to privacy is also established in the Constitution of the State of Washington which explicitly recognizes an individual's right to privacy and states under Article 1 §7: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

130. Plaintiffs bring this claim individually and on behalf of the Nationwide Class.

131. Plaintiffs and the Nationwide Class members have an objective, reasonable expectation of privacy in their Website Communications.

132. Defendants' conduct, through their unlawful interception of Plaintiffs' and the Nationwide Class' communications when they visited Zillow's website with Microsoft's Session Replay Code enabled without their consent, violates Article 1 §7 of the Constitution of the State of Washington.

1           133. Plaintiffs and the Nationwide Class members did not consent to, authorize, or  
2 know about Defendants' intrusion at the time it occurred. Plaintiffs and the Nationwide Class  
3 members never agreed that Defendants could collect or disclose their Website Communications.

4           134. Plaintiffs and the Nationwide Class members had a legitimate and reasonable  
5 expectation of privacy in precluding the dissemination and/or misuse of their information and  
6 communications and in conducting their personal activities without intrusion or interference,  
7 including the right to not have their personal information intercepted and utilized for business  
8 gain.

9           135. Defendants intentionally intrude on Plaintiffs' and the Nationwide Class  
10 members' private life, seclusion, or solitude, without consent.

11           136. Defendants' conduct is highly offensive and objectionable to a reasonable person  
12 and constitutes an egregious breach of the social norms underlying the right to privacy.

13           137. Defendants' conduct, by unlawfully intercepting the communications of Plaintiffs  
14 and the Nationwide Class members any time they visit Zillow's website with Microsoft's Session  
15 Replay Code enabled without their consent, was a proximate cause of damage to Plaintiffs and  
16 the Nationwide Class members.

17           138. Plaintiffs and the Nationwide Class members were harmed by Defendants'  
18 wrongful conduct as Defendants' conduct has caused Plaintiffs and the Nationwide Class mental  
19 anguish and suffering arising from their loss of privacy and confidentiality of their electronic  
20 communications.

21           139. Defendants' conduct has needlessly harmed Plaintiffs and the Nationwide Class  
22 by capturing intimately personal facts and data in the form of their Website Communications.  
23

1 This disclosure and loss of privacy and confidentiality has caused Plaintiffs and the Nationwide  
 2 Class to experience mental anguish, emotional distress, worry, fear, and other harms.

3 140. Additionally, given the monetary value of individual personal information,  
 4 Defendants deprived Plaintiffs and the Nationwide Class members of the economic value of their  
 5 interactions with Zillow's website, without providing proper consideration for Plaintiffs' and the  
 6 Nationwide Class members' property.

7 141. Further, Defendants have improperly profited from their invasion of Plaintiffs and  
 8 the Nationwide Class members' privacy in its use of their data for its economic value.

9 142. As a direct and proximate result of Defendants conduct, Plaintiffs and the  
 10 Nationwide Class members are entitled to damages, including compensatory, punitive, and/or  
 11 nominal damages, in an amount to be proven at trial.

12 143. Defendants' conduct is ongoing, and it continues to unlawfully intercept the  
 13 communications of Plaintiffs and the Nationwide Class members any time they visit Zillow's  
 14 website with Microsoft's Session Replay Code and other Session Replay Providers Code enabled  
 15 without their consent. Plaintiffs and the Nationwide Class members are entitled to declaratory  
 16 and injunctive relief to prevent future interceptions of their communications.

### 17 **COUNT 3**

#### 18 **Violation of Pennsylvania Wiretap Act 18 Pa. Cons. Stat. § 5701, et. seq.**

#### 19 **(In the Alternative On behalf of Plaintiffs Ashley Popa and Jamie Huber and the 20 Pennsylvania Subclass)**

21 144. Plaintiffs Ashley Popa and Jamie Huber ("Plaintiffs," for purposes of this Count),  
 22 individually and on behalf of the Pennsylvania Subclass, repeat and reallege each and every  
 23 allegation contained above as if fully alleged herein.

1           145. The Pennsylvania Wiretap Act (the “Act”) prohibits (1) the interception or  
2 procurement of another to intercept any wire, electronic, or oral communication; (2) the  
3 intentional disclosure of the contents of any wire, electronic, or oral communication that the  
4 discloser knew or should have known was obtained through the interception of a wire, electronic,  
5 or oral communication; and (3) the intentional use of the contents of any wire, electronic, or oral  
6 communication that the discloser knew or should have known was obtained through the  
7 interception of a wire, electronic, or oral communication. 18 Pa. Cons. Stat. § 5703.

8           146. Any person who intercepts, discloses, or uses or procures any other person to  
9 intercept, disclose, or use, a wire, electronic, or oral communication in violation of the Act is  
10 subject to a civil action for (1) actual damages, not less than liquidated damages computed at the  
11 rate of \$100/day for each violation or \$1,000, whichever is higher; (2) punitive damages; and (3)  
12 reasonable attorneys’ fees and other litigation costs incurred. 18 Pa. Cons. Stat. § 5725(a).

13           147. “Intercept” is defined as any “[a]ural or other acquisition of the contents of any  
14 wire, electronic or oral communication through the use of any electronic, mechanical or other  
15 device.” 18 Pa. Cons. Stat. § 5702.

16           148. “Intercept” is defined as any “[a]ural or other acquisition of the contents of any  
17 wire, electronic or oral communication through the use of any electronic, mechanical or other  
18 device.” 18 Pa. Cons. Stat. § 5702.

19           149. “Person” is defined as “any individual, partnership, association, joint stock  
20 company, trust or corporation.” 18 Pa. Cons. Stat. § 5702.

21           150. “Electronic Communication” is defined as “[a]ny transfer of signs, signals,  
22 writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a  
23 wire, radio, electromagnetic, photoelectronic or photo-optical system.” 18 Pa. Cons. Stat. § 5702.

1 151. Zillow is a person for purposes of the Act because it is a corporation.

2 152. Session Replay Code like that procured by Zillow is a “device” used for the  
3 “acquisition of the contents of any wire, electronic, or oral communication” within the meaning  
4 of the Act.

5 153. Plaintiffs’ and Pennsylvania Subclass members’ intercepted Website  
6 Communications constitute the “contents” of electronic communication[s]” within the meaning  
7 of the Act.

8 154. Zillow intentionally procures and embeds Session Replay Code on its website to  
9 spy on, automatically and secretly, and intercept its website visitors’ electronic interactions  
10 communications with Zillow in real time.

11 155. Plaintiffs’ and Pennsylvania Subclass members’ electronic communications are  
12 intercepted contemporaneously with their transmission.

13 156. Plaintiffs and Pennsylvania Subclass members did not consent to having their  
14 Website Communications wiretapped.

15 157. Pursuant to 18 Pa. Cons. Stat. 5725(a), Plaintiffs and the Pennsylvania Subclass  
16 members seek (1) actual damages, not less than liquidated damages computed at the rate of  
17 \$100/day for each violation or \$1,000, whichever is higher; (2) punitive damages; and (3)  
18 reasonable attorneys’ fees and other litigation costs incurred.

19 158. Zillow’s conduct is ongoing, and it continues to unlawfully intercept the  
20 communications of Plaintiffs and Pennsylvania Subclass members any time they visit  
21 Defendant’s website with Session Replay Code enabled without their consent. Plaintiffs and  
22 Pennsylvania Subclass members are entitled to declaratory and injunctive relief to prevent future  
23 interceptions of their communications.

**COUNT 4**

**Invasion of Privacy – Pennsylvania Intrusion Upon Seclusion  
(In the Alternative On behalf of Plaintiffs Ashley Popa and Jamie Huber and the  
Pennsylvania Subclass)**

159. Plaintiffs Ashley Popa and Jamie Huber (“Plaintiffs,” for purposes of this Count), individually and on behalf of the Pennsylvania Subclass, repeat and reallege each and every allegation contained above as if fully alleged herein.

160. Pennsylvania common law recognizes the tort of invasion of privacy. The right to privacy is also embodied in multiple sections of the Pennsylvania constitution.

161. Plaintiffs bring this claim individually and on behalf of the Pennsylvania Subclass.

162. Plaintiffs and Subclass members have an objective, reasonable expectation of privacy in their Website Communications.

163. Plaintiffs and Subclass members did not consent to, authorize, or know about Zillow’s intrusion at the time it occurred. Plaintiffs and Pennsylvania Subclass members never agreed that Zillow could collect or disclose their Website Communications.

164. Plaintiffs and Pennsylvania Subclass members had an objective interest in precluding the dissemination and/or misuse of their information and communications and in conducting their personal activities without intrusion or interference, including the right to not have their personal information intercepted and utilized for business gain.

165. Zillow intentionally intrudes on Plaintiffs’ and Pennsylvania Subclass members’ private life, seclusion, or solitude, without consent.

166. Zillow’s conduct is highly objectionable to a reasonable person and constitutes an egregious breach of the social norms underlying the right to privacy.



1           167. Plaintiffs and Pennsylvania Subclass members were harmed by Zillow's wrongful  
2 conduct as Zillow's conduct has caused Plaintiffs and the Pennsylvania Subclass mental anguish  
3 and suffering arising from their loss of privacy and confidentiality of their electronic  
4 communications.

5           168. Zillow's conduct has needlessly harmed Plaintiffs and the Pennsylvania Subclass  
6 by capturing intimately personal facts and data in the form of their Website Communications.  
7 This disclosure and loss of privacy and confidentiality has caused Plaintiffs and the Pennsylvania  
8 Subclass to experience mental anguish, emotional distress, worry, fear, and other harms.

9           169. Additionally, given the monetary value of individual personal information,  
10 Defendant deprived Plaintiffs and Pennsylvania Subclass members of the economic value of their  
11 interactions with Defendant's website, without providing proper consideration for Plaintiffs' and  
12 Pennsylvania Subclass members' property.

13           170. Further, Zillow has improperly profited from its invasion of Plaintiffs and  
14 Subclass members' privacy in its use of their data for its economic value.

15           171. As a direct and proximate result Zillow's conduct, Plaintiffs and Pennsylvania  
16 Subclass members are entitled to damages, including compensatory, punitive, and/or nominal  
17 damages, in an amount to be proven at trial.

18           172. Zillow's conduct is ongoing, and it continues to unlawfully intercept the  
19 communications of Plaintiffs and Pennsylvania Subclass members any time they visit  
20 Defendant's website with Session Replay Code enabled without their consent. Plaintiffs and  
21 Subclass members are entitled to declaratory and injunctive relief to prevent future interceptions  
22 of their communications.  
23

**COUNT 5****Violation of Illinois Eavesdropping Act****720 ILCS 5/14-1, *et seq.*****(In the Alternative On behalf of Plaintiffs Jill Strelzin, and Ryan Margulis and the Illinois Subclass)**

173. Plaintiffs Jill Strelzin and Ryan Margulis (“Plaintiffs,” for purposes of this Count), individually and on behalf of the Illinois Subclass, repeat and reallege each and every allegation contained above as if fully alleged herein.

174. The Illinois Eavesdropping Act (the “Act”) prohibits (1) using an eavesdropping device in a surreptitious manner to overhear, transmit, or record all or any part of any private conversation; (2) intercepting, recording, or transcribing, in a surreptitious manner, any private electronic communication without consent; (3) manufacturing, assembling, distributing, or possessing any electronic, mechanical, eavesdropping, or other device knowing that or having reason to know that the design of the device renders it primarily useful for the purpose of surreptitious overhearing, transmitting, or recording of private conversations or the intersection; or (4) using or disclosing any information which he or she knows or reasonably should know was obtained from a private conversation or private electronic communication without the consent of all parties to the private electronic communication. 720 ILCS 5/14-2.

175. Any party to any conversation or private electronic communication upon which eavesdropping was practiced shall be entitled to (1) an injunction to prohibit further eavesdropping; (2) actual damages; and (3) punitive damages. punitive damages; 720 ILCS 5/14-6.

176. “Eavesdropping device” is defined as any “any device capable of being used to hear or record oral conversation or intercept, or transcribe electronic communications whether

1 such conversation or electronic communication is conducted in person, by telephone, or by any  
 2 other means[.]” 720 ILCS 5/14-1(a).

3 177. “Eavesdropper” is defined as “any person, including any law enforcement officer  
 4 and any party to a private conversation, who operates or participates in the operation of any  
 5 eavesdropping device contrary to the provisions of this Article or who acts as a principal, as  
 6 defined in this Article.” 720 ILCS 5/14-1(b).

7 178. “Principle” is defined as “any person who: (1) knowingly employs another who  
 8 illegally uses an eavesdropping device in the course of such employment; or (2) knowingly  
 9 derives any benefit or information from the illegal use of an eavesdropping device by another; or  
 10 (3) directs another to use an eavesdropping device illegally on his or her behalf.” 720 ILCS 5/14-  
 11 1(c).

12 179. “Private electronic communication” is defined as “any transfer of signs, signals,  
 13 writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire,  
 14 radio, pager, computer, electromagnetic, photo electronic or photo optical system, when the  
 15 sending or receiving party intends the electronic communication to be private under  
 16 circumstances reasonably justifying that expectation. A reasonable expectation shall include any  
 17 expectation recognized by law, including, but not limited to, an expectation derived from a  
 18 privilege, immunity, or right established by common law, Supreme Court rule, or the Illinois or  
 19 United States Constitution.” ILCS 5/14-1(e).

20 180. “Surreptitious” is defined as being “obtained or made by stealth or deception, or  
 21 executed through secrecy or concealment.” 720 ILCS 5/14-1(g).

22 181. Zillow is an “Eavesdropper” and “Principal” for purposes of the Act because it  
 23 operates or participates in the operation of an eavesdropping device, knowingly employs another

1 who illegally uses an eavesdropping device, derives a benefit or information from the illegal use  
2 of an eavesdropping device, and directs another to use an eavesdropping device illegally on its  
3 behalf.

4 182. Session Replay Code like that operated and employed at Zillow's direction is a  
5 "eavesdropping device" used to transcribe electronic communications within the meaning of the  
6 Act.

7 183. Plaintiffs and the Illinois Subclass were not aware that Defendants and the other  
8 Session Replay Providers were intercepting and recording their Website Communications.

9 184. Plaintiffs' and Subclass members' intercepted Website Communications  
10 constitute the private electronic communications and private conversations within the meaning  
11 of the Act.

12 185. Zillow intentionally operated and employed Session Replay Code on its website  
13 to spy on, automatically and secretly, and intercept its website visitors' private electronic  
14 interactions communications with Zillow in real time.

15 186. Plaintiffs' and Illinois Subclass members' private electronic communications  
16 were intercepted contemporaneously with their transmission.

17 187. Plaintiffs and Illinois Subclass members had a reasonable expectation of privacy  
18 in their Website Communications based on the detailed information the Session Replay Code  
19 collected from Plaintiffs and Illinois Subclass members.

20 188. Plaintiffs and Illinois Subclass members did not consent to having their Website  
21 Communications surreptitiously intercepted and recorded.

189. Pursuant to 720 ILCS 5/14-6, Plaintiffs and members of the Illinois Subclass are entitled to: (1) an injunction to prohibit further eavesdropping; (2) actual damages; and (3) punitive damages.

190. Zillow's conduct is ongoing, and it continues to unlawfully intercept the communications of Plaintiffs and Subclass members any time they visit Defendant's website with Session Replay Code enabled without their consent. Plaintiffs and Subclass members are entitled to declaratory and injunctive relief to prevent future interceptions of their communications.

### **COUNT 6**

#### **Violation of Illinois Consumer Fraud and Deceptive Business Practices Act**

#### **815 ILCS 505/1 *et seq.***

**(In the Alternative On behalf of Plaintiffs Jill Strelzin and Ryan Margulis and the Illinois Subclass)**

191. Plaintiffs Jill Strelzin and Ryan Margulis ("Plaintiffs," for purposes of this Count), individually and on behalf of the Illinois Subclass, repeat and reallege each and every allegation contained above as if fully alleged herein.

192. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* ("ICFA") protects both consumers and competitors by promoting fair competition in commercial markets for goods and services.

193. The ICFA prohibits "unfair or deceptive acts or practices," including "misrepresentation or the concealment, suppression or omission of any material fact." 815 ILCS 505/2.

194. The ICFA applies to Zillow's conduct described herein because it protects consumers in transactions that are intended to result, or which have resulted in the sale of goods or services.

1 195. Zillow is a “person” within the meaning of ILCS 505/1(c) because it is a  
2 corporation.

3 196. Plaintiffs and members of the Illinois Subclass are “consumers” within the  
4 meaning of 815 ILCS 505/1(e) because they visited www.zillow.com to shop for, purchase, or  
5 contract to purchase “merchandise”—real estate—for their own use.

6 197. Zillow’s advertising, offering for sale, and sale of real estate on www.zillow.com  
7 is considered “trade” or “commerce” within the meaning of 815 ILCS 505/1(f).

8 198. Zillow violated the ICFA by concealing material facts about www.zillow.com.  
9 Specifically, Zillow omitted and concealed that it directed Session Replay Providers to secretly  
10 monitor, collect, transmit, and discloses its website visitors’ Website Communications to the  
11 Session Replay Providers using Session Replay Code.

12 199. Zillow’s direction and employment of the Session Replay Providers and their  
13 Session Replay Codes to intercept, collect, and disclose website visitors’ Website  
14 Communications are material to the transactions on www.zillow.com. Zillow is leading online  
15 residential real estate marketplace in the United States and Zillow does not disclose its use of  
16 Session Replay Code to secretly monitor and collect website visitors’ Website Communications.  
17 Had Plaintiffs and the Illinois Subclass members known that the Session Replay Codes (that  
18 collect, transmit, and disclose Website Communications to the Session Replay Providers) were  
19 embedded in Zillow’s website, they would not have visited www.zillow.com to shop for,  
20 purchase, or contract to purchase real estate or they would have required Zillow to compensate  
21 them for the interception, collection, and disclosure of their Website Communications.

22 200. Zillow’s intentional concealment of the interception, collection, and disclosure of  
23 website visitors’ Website Communications using Session Replay Code embedded in

1 www.zillow.com is material because it knows that consumers would not otherwise visit its  
2 website to search for, purchase, and contract to purchase real estate. Indeed, Zillow's  
3 concealment of such facts was intended to mislead consumers.

4 201. Zillow's concealment, suppression, and omission of material facts was likely to  
5 mislead reasonable consumers under the circumstances, and thus constitutes an unfair and  
6 deceptive trade practice in violation of the ICFA.

7 202. By failing to disclose and inform Plaintiffs and the Illinois Class about its  
8 interception, collection, and disclosure of website visitors' Website Communications, Zillow  
9 violated section 505/2 of the ICFA.

10 203. As a direct and proximate result of these unfair and deceptive practices, Plaintiffs  
11 and each Illinois Subclass member have suffered actual harm in the form of money and/or  
12 property because the disclosure of their Website Communications has value as demonstrated by  
13 the collection and use of it by Zillow. The collection and use of this information has now  
14 diminished the value of such information to Plaintiffs and Illinois Subclass members.

15 204. As such, Plaintiffs and Illinois Subclass members seek an order (1) requiring  
16 Zillow to cease the unfair practices described herein; (2) awarding actual damages; and (3)  
17 awarding reasonable attorneys' fees and costs.

18 205. Zillow's conduct is ongoing, and it continues to unlawfully intercept the  
19 communications of Plaintiffs and Illinois Subclass members any time they visit Defendant's  
20 website with Session Replay Code enabled without their consent. Plaintiffs and Subclass  
21 members are entitled to declaratory and injunctive relief to prevent future interceptions of their  
22 communications.

**COUNT 7**

**Invasion of Privacy – Illinois Intrusion Upon Seclusion  
(In the Alternative On behalf of Plaintiffs Jill Strelzin, and Ryan Margulis and the Illinois Subclass)**

206. Plaintiffs Jill Strelzin and Ryan Margulis (“Plaintiffs,” for purposes of this Count), individually and on behalf of the Illinois Subclass, repeat and reallege each and every allegation contained above as if fully alleged herein.

207. Plaintiffs bring these claims individually and on behalf of the Subclass against Defendants.

208. Illinois common law recognizes the tort of invasion of privacy. The right to privacy is also embodied in the Illinois constitution.

209. Plaintiffs and Illinois Subclass members had an objective, reasonable expectation of privacy in their Website Communications.

210. Plaintiffs and Subclass members did not consent to, authorize, or know about Defendants’ intrusion at the time it occurred. Plaintiffs and Subclass members never agreed that Defendants could collect or disclose their Website Communications.

211. Plaintiffs and Illinois Subclass members had an objective interest in precluding the dissemination and/or misuse of their information and communications and in conducting their personal activities without intrusion or interference, including the right to not have their personal information intercepted and utilized for business gain.

212. Defendants intentionally intruded on Plaintiffs’ and Illinois Subclass members’ private life, seclusion, or solitude, without consent.

213. Defendants’ conduct is highly objectionable to a reasonable person and constitutes an egregious breach of the social norms underlying the right to privacy.



1           214. Plaintiffs and Illinois Subclass members were harmed by Defendants' wrongful  
2 conduct as such conduct has caused Plaintiffs and the Illinois Subclass mental anguish and  
3 suffering arising from their loss of privacy and confidentiality of their electronic  
4 communications.

5           215. Defendants' conduct has needlessly harmed Plaintiffs and the Illinois Subclass by  
6 capturing intimately personal facts and data in the form of their Website Communications. This  
7 disclosure and loss of privacy and confidentiality has caused Plaintiffs and the Illinois Subclass  
8 to experience mental anguish, emotional distress, worry, fear, and other harms.

9           216. Additionally, given the monetary value of individual personal information,  
10 Defendants deprived Plaintiffs and Illinois Subclass members of the economic value of their  
11 interactions with Zillow's website, without providing proper consideration for Plaintiffs' and  
12 Illinois Subclass members' property.

13           217. Further, Defendants have improperly profited from its invasion of Plaintiffs and  
14 Illinois Subclass members' privacy in its use of their data for its economic value.

15           218. As a direct and proximate result Defendants' conduct, Plaintiffs and Illinois  
16 Subclass members are entitled to damages, including compensatory, punitive, and/or nominal  
17 damages, in an amount to be proven at trial.

18           219. Defendants' conduct is ongoing, and it continues to unlawfully intercept the  
19 communications of Plaintiffs and Illinois Subclass members any time they visit Zillow's website  
20 with session replay software enabled without their consent. Plaintiffs and Illinois Subclass  
21 members are entitled to declaratory and injunctive relief to prevent future interceptions of their  
22 communications.

**COUNT 8**

**Violation of Missouri Wiretap Act,  
Mo. Ann. Stat. §§ 542.400 *et seq.***

**(In the Alternative On behalf of Plaintiff Jill Adams and the Missouri Subclass)**

220. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

221. Plaintiff Jill Adams brings this claim on behalf herself and her minor child H.A. (“Plaintiff,” for purposes of this Count), individually and on behalf of the Missouri Subclass, repeat and reallege each and every allegation contained above as if fully alleged herein.

222. The Missouri wiretap statute broadly prohibits the interception, disclosure or use of any wire, oral or electronic communication. Mo. Stat. § 542.402.

223. Any person whose wire communication is intercepted, disclosed, or used in violation of sections 542.00 to 542.422 shall (1) have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications; and (2) be entitled to recover from any such person: (a) actual damages, but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation or ten thousand dollars whichever is greater; (b) punitive damages on a showing of a willful or intentional violation of sections 542.400 to 542.422; and (c) a reasonable attorney's fee and other litigation costs reasonably incurred. Mo. Stat. § 542.218.

224. “Wire communication” is defined as “any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of local, state or interstate communications.” Mo. Stat. § 542.200(12).

1           225. A “Person” is “defined as any employee, or agent of this state or political  
2 subdivision of this state, and any individual, partnership, association, joint stock company, trust,  
3 or corporation.” Mo. Stat. § 542.200(9).

4           226. “Intercept” is defined as “the aural acquisition of the contents of any wire  
5 communication through the use of any electronic or mechanical device, including but not limited  
6 to interception by one spouse of another spouse.” Mo. Stat. § 542.200(6).

7           227. “Electronic, mechanical, or other device” is defined as “any device or apparatus  
8 which can be used to intercept a wire communication other than: (a) Any telephone or telegraph  
9 instrument, equipment or facility, or any component thereof, owned by the user or furnished to  
10 the subscriber or user by a communications common carrier in the ordinary course of its business  
11 and being used by the subscriber or user in the ordinary course of its business or being used by a  
12 communications common carrier in the ordinary course of its business or by an investigative  
13 office or law enforcement officer in the ordinary course of his duties; or (b) A hearing aid or  
14 similar device being used to correct subnormal hearing to not better than normal.” Mo. Stat. §  
15 542.200(5).

16           228. “Contents,” “when used with respect to any wire communication, includes any  
17 information concerning the identity of the parties, the substance, purport, or meaning of that  
18 communication.” Mo. Stat. § 542.200(3).

19           229. An “Aggrieved person” is defined as “a person who was a party to any intercepted  
20 wire communication or a person against whom the interception was directed.” Mo. Stat. §542.200  
21 (1).

22           230. Zillow is a “Person” for purposes of the Act because it is a corporation.

23           231. Microsoft is a “Person” for purposes of the Act because it is a corporation.

1           232. Session Replay Code like that procured from Microsoft, operated and employed  
2 at Zillow's direction is an "electronic, mechanical or other device" used to transcribe electronic  
3 communications and to intercept a wire communication within the meaning of the Act.

4           233. Plaintiffs and the Missouri Subclass were not aware that Defendants and the other  
5 Session Replay Providers were intercepting and recording their Website Communications.

6           234. Plaintiff's and Missouri Subclass members' intercepted Website Communications  
7 constitute wire communications within the meaning of the Act.

8           235. Defendants intentionally operated and employed Session Replay Code on  
9 Zillow's website to spy on, automatically and secretly, and intercept its website visitors' private  
10 electronic interactions communications with Zillow in real time, which are Contents within the  
11 meaning of the Act.

12           236. Plaintiff's and Missouri Subclass members' private electronic communications  
13 were intercepted contemporaneously with their transmission.

14           237. Plaintiff and members of the Missouri Subclass had a reasonable expectation of  
15 privacy in their Website Communications based on the detailed information the Session Replay  
16 Code collected from Plaintiff and members of the Missouri Subclass.

17           238. Plaintiff and members of the Missouri Subclass did not consent to having their  
18 Website Communications surreptitiously intercepted and recorded and are Aggrieved persons  
19 within the meaning of the Act.

20           239. Pursuant to Mo. Stat. § 542.418, Plaintiff and members of the Missouri Subclass  
21 are entitled to: (1) actual damages; (2) statutory damages including liquidated damages at \$100  
22 per day of violation or \$10,000, whichever is greater, and (3) punitive damages. Plaintiff- and  
23 the Missouri Subclass are also entitled to an award of attorney's fees and expenses.

240. Defendants' conduct is ongoing, and it continues to unlawfully intercept the communications of Plaintiff and members of the Missouri Subclass any time they visit Zillow's website with Session Replay Code enabled without their consent. Plaintiff and members of the Missouri Subclass are entitled to declaratory and injunctive relief to prevent future interceptions of their communications.

### **COUNT 9**

#### **Violation of Missouri's Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.***

**(In the Alternative On behalf of Plaintiff Jill Adams and the Missouri Subclass)**

241. Plaintiff Jill Adams brings this claim on behalf of herself and her minor child H.A. ("Plaintiff," for purposes of this Count), individually and on behalf of the Missouri Subclass, repeat and reallege each and every allegation contained above as if fully alleged herein. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

242. Plaintiff brings this claim individually and on behalf of the Missouri Subclass.

243. The Missouri Merchandising Practice Act (for the purposes of this section, "MPA") protects both consumers and competitors by promoting fair competition in commercial markets for goods and services.

244. The Missouri MPA makes unlawful the "act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce." Mo. Rev. Stat. § 407.020.

245. Plaintiff, individually and on behalf of the Missouri Subclass, is entitled to bring this action pursuant to Mo. Rev. Stat. § 407.025, which provides in relevant part that: (a) Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a

1 result of the use or employment by another person of a method, act or practice declared unlawful  
2 by section 407.020, may bring a private civil action in either the circuit court of the county in  
3 which the seller or lessor resides or in which the transaction complained of took place, to recover  
4 actual damages. The court may, in its discretion, award to the prevailing party attorney's fees,  
5 based on the amount of time reasonably expended, and may provide such equitable relief as it  
6 deems necessary or proper.

7 246. Zillow is a "person" within the meaning of the Mo. Rev. Stat. § 407.010(5) in that  
8 Zillow is a domestic "[...] for-profit [...] corporation."

9 247. Microsoft is a "person" within the meaning of the Mo. Rev. Stat. § 407.010(5) in  
10 that Zillow is a domestic "[...] for-profit [...] corporation."

11 248. Plaintiffs and members of the Missouri Subclass are "persons" under the MPA in  
12 that they are natural person or a natural person's legal representative, and they visited  
13 www.zillow.com to utilize the Zillow search engine for personal, family, and/or household use.  
14 Furthermore, Plaintiff Jill Adams visited www.zillow.com to utilize the Zillow search engine to  
15 shop for, purchase, and/or contract to purchase "merchandise"—real estate—for personal,  
16 family, and/or household use. Plaintiff Jill Adams also downloaded and used the Zillow App for  
17 personal, family, and/or household purposes.

18 249. The MPA applies to Defendants' conduct described herein because it protects  
19 consumers in transactions that are intended to result, or which have resulted in the sale of goods  
20 or services.

21 250. The MMPA defines "merchandise" as any objects, wares, goods, commodities,  
22 intangibles, real estate, or services. See Mo. Rev. Stat. § 407.010. Thus, the real estate search  
23 engine regarding millions of for-sale and rental listings, the Zestimate® home value service,

1 and/or local professionals connector are services that Zillow provides to its website visitors are  
 2 merchandise within the meaning of the Act. Plaintiffs and members of the Subclass also received  
 3 Zillow's offer to use a search engine and/or look at a Zestimate and accepted that offer by using  
 4 the search engine and/or looking at a Zestimate under the act, relying on the Terms of Use of the  
 5 Website.

6 251. Trade" or "commerce" is defined as "the advertising, offering for sale, sale, or  
 7 distribution, or any combination thereof, of any services and any property, tangible or intangible,  
 8 real, personal, or mixed, and any other article, commodity, or thing of value wherever situated."  
 9 Zillow's advertising, offering for sale, and sale of its real estate search engine and the real estate  
 10 located thereon on www.zillow.com is considered "trade" or "commerce" in the State of Missouri  
 11 within the meaning of Mo. Rev. Stat. § 407.010(7).

12 252. The Missouri Attorney General has promulgated regulations defining the meaning  
 13 of unfair practice as used in the above statute. Specifically, Mo. Code Regs. tit. 15, § 60-8.020,  
 14 provides:

15 a. An unfair practice is any practice which—

16 i. Either—

- 17 1. Offends any public policy as it has been established by the  
 18 Constitution, statutes or common law of this state, or by the  
 19 Federal Trade Commission, or its interpretive decisions; or  
 20 2. Is unethical, oppressive or unscrupulous; and

21 ii. Presents a risk of, or causes, substantial injury to consumers.

22 b. Proof of deception, fraud, or misrepresentation is not required to prove unfair  
 23 practices as used in section 407.020.1., RSMo. (*See, Federal Trade*

1 *Commission v. Sperry and Hutchinson Co.*, 405 U.S. 233, 92 S.Ct. 898, 31  
 2 L.Ed.2d 170 (1972); *Marshall v. Miller*, 302 N.C. 539, 276 S.E.2d 397 (N.C.  
 3 1981); *see also*, Restatement, Second, Contracts, sections 364 and 365).

4 253. Pursuant to Mo. Rev. Stat. §407.020 and Mo. Code Regs. Tit. 15, § 60- 8.020,  
 5 Defendant's acts and omissions fall within the meaning of "unfair."

6 254. Missouri case law provides that the MMPA's "literal words cover *every practice*  
 7 *imaginable and every unfairness to whatever degree.*" *Conway v. CitiMortgage, Inc.*, 438S.W.3d  
 8 410, 416 (Mo. 2014) (quoting *Ports Petroleum Co., Inc. of Ohio v. Nixon*, 37 S.W.3d237, 240  
 9 Mo. banc 2001). Furthermore, the statute's "plain and ordinary meaning of the words themselves  
 10 . are unrestricted, all-encompassing and exceedingly broad." *Id.* at 240.

11 255. Zillow violated the MPA by omitting and/or concealing material facts about  
 12 www.zillow.com and/or engaging in unfair or deceptive trade practices in its operation of  
 13 www.zillow.com. Notably, Zillow omitted and/or concealed that it directed Session Replay  
 14 Providers to secretly monitor, collect, transmit, and discloses its website visitors' Website  
 15 Communications to the Session Replay Providers using Session Replay Code.

16 256. Zillow's direction and employment of the Session Replay Providers and their  
 17 Session Replay Codes to intercept, collect, and disclose website visitors' Website  
 18 Communications are material to the transactions on www.zillow.com. Zillow is leading online  
 19 residential real estate marketplace in the United States and Zillow does not disclose its use of  
 20 Session Replay Code to secretly monitor and collect website visitors' Website Communications.  
 21 Had Plaintiff and the members of the Missouri Subclass known that the Session Replay Codes  
 22 (that collect, transmit, and disclose Website Communications to the Session Replay Providers)  
 23 were embedded in Zillow's website, they would not have visited www.zillow.com to shop for,



1 purchase, or contract to purchase real estate or they would have required Zillow to compensate  
2 them for the interception, collection, and disclosure of their Website Communications.

3 257. Zillow intentionally concealed the interception, collection, and disclosure of  
4 website visitors' Website Communications using Microsoft's Session Replay Code embedded in  
5 www.zillow.com is material because it knows that consumers would not otherwise visit its  
6 website to search for, purchase, and contract to purchase real estate. Indeed, Zillow's  
7 concealment of such facts was intended to mislead consumers.

8 258. Zillow's concealment, suppression, and/or omission of material facts was likely  
9 to mislead reasonable consumers under the circumstances, and thus constitutes an unfair and  
10 deceptive trade practice in violation of the MPA.

11 259. By failing to disclose and inform Plaintiff and the Subclass about its interception,  
12 collection, and disclosure of website visitors' Website Communications, Zillow engaged in acts  
13 and practices that constitute unlawful practices in violation of Mo. Ann. Stat. §§ 407.010, et seq.

14 260. As a direct and proximate result of these unfair and deceptive practices, Plaintiff  
15 and each member of the Missouri Subclass has suffered actual harm in the form of money and/or  
16 property because the disclosure of their Website Communications has value as demonstrated by  
17 the collection and use of it by Zillow. The collection and use of this information has now  
18 diminished the value of such information to Plaintiff and the Missouri Subclass.

19 261. As such, Plaintiff and the Missouri Subclass seek an order (1) requiring Zillow to  
20 cease the unfair practices described herein; (2) awarding actual damages; and (3) awarding  
21 reasonable attorneys' fees and costs. Plaintiff and the Subclass seek all relief available under Mo.  
22 Ann. Stat. § 407.020, which prohibits "the act, use or employment by any person of any  
23 deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the

1 concealment, suppression, or omission of any material fact in connection with the sale or  
 2 advertisement of any merchandise in trade or commerce...,” as further interpreted by Mo. Code  
 3 Regs. Ann. tit. 15, §§ 60-7.010, *et seq.*, Mo. Code Regs. Ann. tit. 15, §§ 60-8.010, *et seq.*, and  
 4 Mo. Code Regs. Ann. tit. 15, §§ 60-9.010, *et seq.*, and Mo. Ann. Stat. § 407.025, which provides  
 5 for the relief sought in this count.

6 262. Zillow’s conduct is ongoing, and it continues to unlawfully intercept the  
 7 communications of Plaintiff and members of the Missouri Subclass any time they visit  
 8 Defendant’s website with Session Replay Code enabled without their consent. Plaintiff and  
 9 members of the Missouri Subclass are entitled to declaratory and injunctive relief to prevent  
 10 future interceptions of their communications.

#### 11 **COUNT 10**

#### 12 **Invasion of Privacy – Missouri Intrusion Upon Seclusion (In the Alternative On behalf of Jill Adams and the Missouri Subclass)**

13 263. Plaintiff Jill Adams brings this claim on behalf of herself and her minor child H.A.  
 14 (“Plaintiff,” for purposes of this Count), individually and on behalf of the Missouri Subclass,  
 15 repeat and reallege each and every allegation contained above as if fully alleged herein.

16 264. Under Missouri law, the general tort of invasion of privacy describes four distinct  
 17 torts: (1) unreasonable intrusion upon the seclusion of another; or (2) appropriation of the other's  
 18 name or likeness; or (3) unreasonable publicity given to the other's private life; or (4) publicity  
 19 that unreasonably places the other in a false light before the public. Plaintiff brings this claim  
 20 individually and on behalf of the Missouri Subclass. Plaintiff states a claim for unreasonable  
 21 intrusion upon the seclusion of another.

22 265. Plaintiff and members of the Subclass had an objective, reasonable expectation of  
 23 privacy in their Website Communications.

1           266. Plaintiff and members of the Missouri Subclass did not consent to, authorize, or  
2 know about Defendants' intrusion at the time it occurred. Plaintiff and members of the Missouri  
3 Subclass never agreed that Defendants could collect or disclose their Website Communications.

4           267. Plaintiff and members of the Missouri Subclass had an objective interest in  
5 precluding the dissemination and/or misuse of their information and communications and in  
6 conducting their personal activities without intrusion or interference, including the right to not  
7 have their personal information intercepted and utilized for business gain.

8           268. Defendants intentionally intruded on Plaintiff's and Missouri Subclass members'  
9 private life, seclusion, or solitude, without consent.

10          269. Defendants' conduct is highly objectionable to a reasonable person and  
11 constitutes an egregious breach of the social norms underlying the right to privacy.

12          270. Plaintiff and members of the Missouri Subclass were harmed by Defendants'  
13 wrongful conduct as Defendants' conduct has caused Plaintiff and the Subclass mental anguish  
14 and suffering arising from their loss of privacy and confidentiality of their electronic  
15 communications.

16          271. Defendants' conduct has needlessly harmed Plaintiff and the Missouri Subclass  
17 by capturing intimately personal facts and data in the form of their Website Communications.  
18 This disclosure and loss of privacy and confidentiality has caused Plaintiff and the Subclass to  
19 experience mental anguish, emotional distress, worry, fear, and other harms.

20          272. Additionally, given the monetary value of individual personal information,  
21 Defendants deprived Plaintiff and members of the Missouri Subclass of the economic value of  
22 their interactions with Zillow's website, without providing proper consideration for Plaintiff's  
23 and Missouri Subclass members' property.

273. Further, Defendants have improperly profited from its invasion of Plaintiff's and Missouri Subclass members' privacy in its use of their data for its economic value.

274. As a direct and proximate result Defendants' conduct, Plaintiff and members of the Missouri Subclass are entitled to damages, including compensatory, punitive, and/or nominal damages, in an amount to be proven at trial.

275. Defendants' conduct is ongoing, and it continues to unlawfully intercept the communications of Plaintiff and members of the Missouri Subclass any time they visit Zillow's website with session replay software enabled without their consent. Plaintiff and members of the Missouri Subclasses are entitled to declaratory and injunctive relief to prevent future interceptions of their communications.

#### **COUNT 11**

#### **Unlawful Wiretapping and Interception of Electronic Communications**

#### **California Penal Code § 631**

#### **(In the Alternative On behalf David Kauffman and the California Subclass)**

276. Plaintiff David Kauffman ("Plaintiff," for purposes of this Count), individually and on behalf of the California Subclass, repeat and reallege each and every allegation contained above as if fully alleged herein.

277. At all relevant times to this complaint, Defendants intercepted components of Plaintiff's and the California Subclass Members' private electronic communications and transmissions when Plaintiff and other Subclass Members accessed Zillow's website within the State of California.

278. At all relevant times to this complaint, Plaintiff and the other California Subclass Members did not know Defendants were engaging in such interception and therefore could not

1 provide consent to have any part of their private electronic communications intercepted by  
2 Defendant.

3 279. Plaintiff and California Subclass Members were completely unaware that  
4 Defendants had intercepted and stored electronic communications and other personal data until  
5 well after the fact and was therefore unable to consent.

6 280. At the inception of Defendants' illegally intercepted and unauthorized collection  
7 of to Plaintiff's and California Subclass Members' electronic communications, Defendants never  
8 advised Plaintiff or the other California Subclass Members that any part of this communications  
9 or their use of Zillow's website would be intercepted.

10 281. Plaintiff and California Subclass Members were completely unaware that their  
11 use of Zillow's website and the electronic communications derived from the use was being  
12 intercepted and stored.

13 282. To establish liability under section 631(a), a plaintiff need only establish that a  
14 defendant, "by means of any machine, instrument, contrivance, or in any other manner," does  
15 any of the following:

- 16 a. Intentionally taps, or makes any unauthorized connection, whether physically,  
17 electrically, acoustically, inductively or otherwise, with any telegraph or  
18 telephone wire, line, cable, or instrument, including the wire, line, cable, or  
19 instrument of any internal telephonic communication system;

20 *Or*

- 21 b. Willfully and without the consent of all parties to the communication, or in  
22 any unauthorized manner, reads or attempts to read or learn the contents or  
23 meaning of any message, report, or communication while the same is in transit

or passing over any wire, line or cable or is being sent from or received at any place within this state;

***Or***

c. Uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained;

***Or***

d. Aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section.

283. Section 631(a) is not limited to phone lines, but also applies to “new technologies” such as computers, the Internet, and email. *Matera v. Google Inc.*, 2016 WL 8200619, at \*21 (N.D. Cal. Aug. 12, 2016) (CIPA applies to “new technologies” and must be construed broadly to effectuate its remedial purpose of protecting privacy); *Bradley v. Google, Inc.*, 2006 WL 3798134, at \*5-6 (N.D. Cal. Dec. 22, 2006) (CIPA governs “electronic communications”); *In re Facebook, Inc. Internet Tracking Litigation*, 956 F.3d 589 (9th Cir. Apr. 9, 2020) (reversing dismissal of CIPA and common law privacy claims based on Facebook’s collection of consumers’ Internet browsing history).

284. Defendants’ use of Session Replay Code amounts to spyware and is a “machine, instrument, contrivance, or . . . other manner” used to engage in the prohibited conduct at issue here.

285. At all relevant times, by using Session Replay Code which is spyware to track, record, and learn the contents of Plaintiff’s and California Subclass Members’ electronic communications, Defendants intentionally tapped, electrically or otherwise, the lines of internet

1 communication between Plaintiff and California Subclass Members on the one hand, and the  
2 specific sites and locations Plaintiffs and California Subclass Members visited on Zillow's  
3 website on the other.

4 286. At all relevant times, by utilizing Session Replay Code as spyware, Defendants  
5 willfully and without the consent of all parties to the communication, or in any unauthorized  
6 manner, read or attempted to read or learn the contents or meaning of electronic communications  
7 of Plaintiff and California Subclass Members, while the electronic communications were in  
8 transit or passing over any wire, line or cable or were being sent from or received at any place  
9 within California.

10 287. Plaintiff and California Subclass Members did not consent to any of Defendants'  
11 actions in implementing these unauthorized connections, nor have Plaintiff or Subclass Members  
12 consented to Defendants' intentional access, interception, reading, learning, recording, and  
13 collection of Plaintiff's and California Subclass Members' electronic communications.

14 288. Plaintiff's and the California Subclass Members' devices that Defendants  
15 accessed through its unauthorized actions included their computers, smart phones, and tablets  
16 and/or other electronic computing devices.

17 289. Defendants violated Cal. Penal Code § 631 by knowingly accessing, and without  
18 permission accessing, Plaintiff's and California Subclass Members' electronic communications  
19 through the use of the Session Replay Code as spyware in order for Defendants to track,  
20 understand, and attempt to learn the contents of Plaintiff's and California Subclass Members'  
21 electronic communications generated by the use of Zillow's website, in violation of Plaintiff's  
22 and California Subclass Members' reasonable expectations of privacy in their devices and data.

290. Defendants violated Cal. Penal Code § 631 by knowingly and without permission intercepting, wiretapping, accessing, taking and using Plaintiff's and the California Subclass Members' personally identifiable information and personal communications with others.

291. Plaintiff and California Subclass Members seek all relief available against Defendants under Cal. Penal Code § 631, including \$2,500 per violation.

### **REQUEST FOR RELIEF**

Plaintiffs, individually and on behalf of themselves and the other members of the proposed Classes, respectfully request that the Court enter judgment in Plaintiffs' and the Classes' favor and against Defendants as follows:

- A. Certifying the Nationwide Class and State Subclasses and appointing Plaintiffs as the representatives of the Classes;
- B. Appointing Plaintiffs' counsel as class counsel;
- C. Declaring that Defendants' past conduct was unlawful, as alleged herein;
- D. Declaring Defendants' ongoing conduct is unlawful, as alleged herein;
- E. Enjoining Defendants from continuing the unlawful practices described herein, and awarding such injunctive and other equitable relief as the Court deems just and proper;
- F. Awarding Plaintiffs, the Nationwide Class and State Subclass members statutory, actual, compensatory, consequential, punitive, and nominal damages, as well as restitution and/or disgorgement of profits unlawfully obtained;
- G. Awarding Plaintiffs, the Nationwide Class members, and State Subclass members pre-judgment and post-judgment interest;
- H. Awarding Plaintiffs, the Nationwide Class members, and State Subclass members reasonable attorneys' fees, costs, and expenses; and



I. Granting such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs, on behalf of themselves and the Classes, demand a trial by jury of any and all issues in this action so triable of right.

DATED this 7th day of April, 2023.

TOUSLEY BRAIN STEPHENS PLLC

By: s/ Kim D. Stephens, P.S.

Kim D. Stephens, P.S., WSBA #11984  
kstephens@tousley.com

s/ Jason T. Dennett

Jason T. Dennett, WSBA #30686  
jdennett@tousley.com

s/ Kaleigh N. Boyd

Kaleigh N. Boyd, WSBA #52684  
kboyd@tousley.com

1200 Fifth Avenue, Suite 1700

Seattle, Washington 98101

Telephone: (206) 682-5600

Fax: (206) 682-2992

Joseph P. Guglielmo, (*pro hac vice*)

Carey Alexander (*pro hac vice*)

Ethan S. Binder (*pro hac vice*)

**SCOTT+SCOTT ATTORNEYS**

**AT LAW LLP**

The Helmsley Building

230 Park Avenue, 17th Floor

New York, NY 10169

Telephone: (212) 223-6444

Facsimile: (212) 223-6334

jguglielmo@scott-scott.com

calexander@scott-scott.com

ebinder@scott-scott.com

E. Kirk Wood (*pro hac vice* forthcoming)

Sharika Robinson (*pro hac vice* forthcoming)

Marcela Jenkins (*pro hac vice* forthcoming)

**WOOD LAW FIRM, LLC**

P. O. Box 382434

Birmingham, AL 35238-2434

Telephone: (205) 908-4906

kirk@woodlawfirmllc.com  
marcelaj@blalocklegal.com

Gary F. Lynch (*pro hac vice*)  
Kelly K. Iverson (*pro hac vice*)  
Jamisen A. Etzel (*pro hac vice*)  
Elizabeth Pollock-Avery (*pro hac vice*)  
Nicholas A. Colella (*pro hac vice*)  
Patrick D. Donathen (*pro hac vice*)

**LYNCH CARPENTER, LLP**

1133 Penn Avenue, 5<sup>th</sup> Floor  
Pittsburgh, Pennsylvania 15222  
Telephone: (412) 322-9243  
Facsimile: (412) 231-0246

gary@lcllp.com  
kelly@lcllp.com  
jamisen@lcllp.com  
elizabeth@lcllp.com  
nickc@lcllp.com  
patrick@lcllp.com

Tiffany Marko Yiatras (*pro hac vice* forthcoming)  
CONSUMER PROTECTION LEGAL, LLC  
308 Hutchinson Road  
Ellisville, Missouri 63011-2029  
Tele: (314) 541-0317  
Email: tiffany@consumerprotectionelegal.com

Bryan L. Bleichner (*pro hac vice* forthcoming)  
**CHESTNUT CAMBRONNE PA**  
100 Washington Avenue S, Suite 1700  
Minneapolis, MN 55401  
Telephone: (612) 339-7300  
Fax: (612) 336-2940  
bbleichner@chestnutcambronne.com

Kate M. Baxter-Kauf (*pro hac vice* forthcoming)  
Karen Hanson Riebel (*pro hac vice* forthcoming)  
**LOCKRIDGE GRINDAL NAUEN P.L.L.P.**  
100 Washington Avenue South, Suite 2200  
Minneapolis, MN 55401  
Telephone: (612) 339-6900  
Facsimile: (612) 339-0981  
kmbaxter-kauf@locklaw.com  
khriebel@locklaw.com

Joshua B. Swigart (*pro hac vice* forthcoming)  
**SWIGART LAW GROUP, APC**  
2221 Camino del Rio S, Ste 308  
San Diego, CA 92108  
Telephone: (866) 219-3343  
Josh@SwigartLawGroup.com

Daniel G. Shay (*pro hac vice* forthcoming)  
**LAW OFFICE OF DANIEL G. SHAY**  
2221 Camino del Rio S, Ste 308  
San Diego, CA 92108  
Telephone: (619) 222-7429  
DanielShay@TCPAFDCPA.com

Ari H. Marcus (*pro hac vice*)  
Joseph H. Kanee (*pro hac vice* forthcoming)  
**MARCUS ZELMAN LLC**  
701 Cookman Avenue, Suite 300  
Asbury Park, New Jersey 07712  
Telephone: (732) 695-3282  
Facsimile: (732) 298-6256  
Ari@marcuszelman.com  
joseph@marcuszelman.com

Brian C. Gudmundson (*pro hac vice*)  
Rachel K. Tack (*pro hac vice*)  
**ZIMMERMAN REED LLP**  
1100 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Telephone: (612) 341-0400  
Facsimile: (612) 341-0844  
brian.gudmundson@zimmreed.com  
rachel.tack@zimmreed.com

Jonathan M. Jagher  
**FREED KANNER LONDON  
& MILLEN LLC**  
923 Fayette Street  
Conshohocken, Pennsylvania 19428  
Telephone: (610) 234-6486  
jjagher@fkmlaw.com

1  
2 Douglas A. Millen  
3 Michael E. Moskovitz  
4 **FREED KANNER LONDON**  
5 **& MILLEN LLC**  
6 2201 Waukegan Road, Ste. 130  
7 Bannockburn, IL 60015  
8 Telephone: (224) 632-4500  
9 dmiller@fklmlaw.com  
10 mmoskovitz@fklmlaw.com  
11 *Attorneys for Plaintiffs and the Putative Class*  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23